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ABSTRACT

This manual contains learning activities to aid secondary teachers in clarifying and enriching the Scholastic materials "Living Law." The format of the manual includes a brief overview, background information, teacher instructions, and a description of each activity. Case studies, simulations, and role-playing activities are provided. Topics treated include helping the victims of crime, the police board, pre-trial release, plea bargaining, the treatment of witnesses, appelate court, runaways, who should go to juvenile Hall, the death penalty, and probation. (Author/RM)

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CRIME AND JUSTICE: 10 ACTIVITIES.

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INTRODUCTION

This manual of case studies, simulations, and role play activities has been developed to aid teachers in clarifying as well as enriching the lesson plans in the Scholastic materials—*Living Law*. In addition, these activity-oriented-materials are intended to be integrated into existing law education programs.

Role playing and simulation can help teach young people how to more effectively manage conflict in their lives and in their world. Through active involvement and analysis, two essential ingredients in simulation, students can develop useful insights regarding the complexities of our society and the difficulty of conflict management. By taking the roles of other individuals in simulations, students can learn and understand how it feels to be caught in a conflict that must somehow be resolved. They can understand that our legal and political system which may seem to be made up of faceless bureaucracies are really run by people. They can learn to analyze and evaluate how and why our system succeeds and fails. In view of the fact that these lessons are activity-oriented they therefore maximize the students' opportunity for participation.

The format of this manual will include a brief overview, background information, teacher instructions and a description of each activity.

As the students study the materials in this book, keep in mind that much of law and the way it is interpreted has to do with the beliefs or values of those doing the interpreting.

The study of these problems will be most meaningful to the class if time is taken to formulate and evaluate individual ideas on these issues.

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CRIME AND JUSTICE — 10 ACTIVITIES

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1 Helping the Victims of Crime

Victim Indemnification Program

Although much thought has been given to the problem of people who are arrested for committing crimes, little thought has been given to the problem of victims of crime. Yet crime victims may suffer loss of valuable property as a result of burglary or robbery. They may suffer physical and/or psychological damage and even death. In the lesson which follows, you will have an opportunity to examine some of the problems faced by victims of crime and their families.

Teacher Instructions

OBJECTIVE: **To identify and describe Victim Compensation Programs and the criteria used in compensating victims.**

NOTE: *This lesson is designed for peer teaching.*

1. Conduct the simulation exercise, "What Do We Owe the Victims of Crime?" This simulation activity involves the decision making process followed by the California Victim Indemnification Program. To begin, ask students to read the introductory material, *Programs to Aid Crime Victims.*
2. Divide the class into groups of three. Acting as the State Board of Control, these groups should make a decision on each of the victim compensation cases provided.
3. When the groups have made their decisions, ask one student from each group to report the decisions to the rest of the class. Each "reporter" should explain the reasons for approving, denying or modifying each of the cases.
4. Inform the class that these cases are based on actual cases decided by the California State Board of Control. The actual decisions reached in each case are:

Case No. 1:	Denied	Complicity in the crime.
Case No. 2:	Denied	No financial hardship.
Case No. 3:	Approved:	$10,000 awarded for medical loss. 1,500 awarded for funeral expenses.
Case No. 4:	Approved:	$ 2,000 awarded for medical loss. 500 awarded for wage loss.

Had the victim in this case invited the man into her apartment for the purpose of prostitution, the claim would have been denied.

5. Using the above cases, ask students how the defendants or persons at fault might be made to compensate victims of their crime. This kind of compensation to victims is called *restitution* and is sometimes made part of a convicted person's sentence or a condition of probation.

Additional Recommendations

1. **Classroom Resource Person:** Ask a police officer, district attorney or city attorney to visit the class and explain the procedures for applying for victim compensation.
2. **Field Experiences:** Find out from the District Attorney's Office when victim indemnification hearings will be held in the near future. At these hearings crime victims argue their cases for compensation. Some students may wish to attend one or more of these hearings.
3. **Suggestions for Further Activities:** Another type of program for victims of crime is directed toward helping rape victims. Recently, a committee of representatives from government and different women's groups in the Los Angeles area issued a series of proposals for new laws to help rape victims. The proposals concentrated on new ways to handle and give treatment to victims of this very emotionally upsetting crime. The committee recommended:
   A. That regional "rape hospitals" be selected to provide 24-hour treatment services for rape victims by "sensitively trained" doctors and nurses;
   B. That the "rape hospitals" have a hot-line to women's organizations set up to counsel rape victims;
   C. That the police department expand its rape investigation squad to include an equal number of male and female officers;
   D. That the police develop a standard set of investigation questions for rape victims. Instruct students to make a list of questions which they feel the police should ask rape victims. Do any of these questions invade the privacy of the rape victim? Even if some questions do invade privacy, should they still be asked by the police? What other suggestions for preventing rape or aiding rape victims can the students think of?

Programs to Aid Crime Victims

A young elementary school teacher was kidnapped from a restaurant, raped, shot six times and left in the street. After spending six months in the county hospital, she finally recovered. Her medical insurance paid for the extensive hospital bills, and the state gave her $2,800 to make up for the lost wages and the cost of job re-training.

A witness waiting at the scene of a traffic accident to give information to the police was hit and pinned against a nearby building when a drunk driver smashed into him. Because his legs were crushed, he lost his $17,000-a-year job as an electrician. The state awarded him, his wife and his children $5,000 each.

Both of these cases involve innocent victims of violent crime who qualified for reimbursement under provisions of the *California Victim Indemnification Program*. Since 1965, the State of California has offered monetary aid to families who have suffered severe financial hardship as a result of violent crime. Since 1967, this program has been administered by the State Board of Control, a three-member panel that is also responsible for settling claims against the State of California. Under the program, eligible victims and/or their dependents can receive up to $23,000 in funds.

While legal protection for the rights of those accused of crimes has been emphasized for many years, there is now also a growing concern for dealing with the effects of crime upon its victims. It is a well-known fact, for example, that the state pays for the police car to usher the person who commits a violent crime to jail—but the victim must pay for his own ambulance ride to the hospital. One attempt that has been made to help the victim is to award state aid to those persons who have undergone undue hardship and difficulties as a result of being a victim of a violent crime. The California Victim Indemnification Program offers one such plan.

Basis for Awards

The State Board of Control, under the California Plan, only makes awards in "crimes of violence" such as assault, robbery, rape, murder, and hit-and-run, where a medical, burial or loss of support occurred. The Board does *not* award money to persons who have lost personal property. The Board only awards money for losses and expenses that have *not* already been paid by insurance, and only when "serious financial hardship" is shown.

Another requirement is that the victim cooperate with the police at all times in regard to the incident upon which the claim is based. In addition, the Board checks to make sure that the victim did not contribute to the incident in some important way. This is particularly important in cases in which drugs and alcohol are involved.

In summary, before making awards, then, the State Board of Control checks to make sure: (1) a violent crime occurred resulting in injury; (2) the victim suffered a serious financial hardship; (3) the victim cooperated with the police; and (4) the victim did not initiate the crime.

Application for aid under the California plan may be filed by either the victim of a violent crime or his/her dependents. In a case in which a victim has died as a result of a violent crime, the person who assumed responsibility for medical and burial costs may apply. The claim must be filed within one year of the incident. Only legal residents of the State of California may qualify for aid.

Getting Assistance

In California, at the time violent crime is reported to the police, the investigating officer will give the victim, or the victim's family, information on the Victim Crime Indemnification Program. The application forms may be obtained from any hospital, law enforcement agency, or from the State Board of Control. This completed application must be returned to the State Board of Control in Sacramento, the state capital.

If an applicant appears to qualify, he/she will receive an information sheet and a questionnaire which

asks more detailed questions about the victim's financial status. The claim is then investigated by the State Attorney General's Office. Once the investigation is completed, the three-person State Board of Control made up of the State Controller, the Director of General Services and a private citizen appointed by the Governor, hears the case.

The Board makes the final decision on how much money, if any, should be awarded to the victim making a claim. The victim is not required to attend the hearing, but may do so. He/she may also be represented by an attorney in all phases of the process. The case is discussed at the hearing and the decision is made at that time.

Good Samaritan Act

In addition to the Victim Indemnification Program, the California legislature has also passed a *Good Samaritan Act* granting monetary aid to persons injured while helping the police or other citizens.

The Good Samaritan Act is also administered by the State Board of Control. Unlike the Victim Indemnification Program, the Act covers the loss of personal property. The maximum award is $5,000. To apply for the Good Samaritan Aid a person needs to visit the local police department or write the State Board of Control.

Compensation Throughout the Country

The rights of citizens to live in a safe society are being recognized throughout the United States. There are seventeen states which now have laws providing compensation for victims of crime. These range from payments of $5,000 to $45,000.

Some states, such as Oregon, have no victim compensation law, but judges are requiring criminals to compensate or make restitution to victims as part of their sentence. In many areas, attorneys are recommending that crime victims file civil suits against the state to recover money to pay for hospital bills and wage losses. Some states with Victim Compensation Programs in existence are also considering expanding their programs to include financial aid for property loss.

The main problem with this idea and the entire victim compensation program is money. Most states operate under compensation boards, and many are behind in the settlement of victim claims due to lack of funds. Many programs are surviving financially because victims do not know about them. With increased public awareness of the programs, more funds will be needed in order for them to work.

Discussion Questions:

1. What is the purpose of the California Victim Indemnification Program?
2. Who is eligible for assistance? How does one qualify for help?
3. How much money can a person receive through this program?
4. What is the Good Samaritan Bill? How is it different from the Victim Indemnification Program? How is it similar?
5. What other kinds of programs are being tried throughout the U.S. to aid victims? What are the advantages and disadvantages of each? Explain.
6. Do you think victims should be reimbursed for medical and wage loss? Should all victims also be reimbursed for property loss or damages they have suffered as a result of criminal activity?
7. What is the main problem the Victim Compensation Program faces in California and throughout the country? What can be done to solve it?
8. If you could change California's law regarding compensating victims, what would you do? What would your laws state?

Case No. 1

Approve ____
Deny ____
Reasons _____

Amount:

Medical _____

Wage _____

Other _____
(Funeral or Job Retraining)

William was at the Shady Oak Bar playing a game of pool with the suspect, Ken Johnson. William had a $50 bet on the game. He lost the pool game, and there was an argument on paying the bet. According to witnesses interviewed by the police, William drew back his arm as though he was going to strike Ken. William took a swing at Ken and missed. Ken picked up the pool cue and struck William in the mouth causing him to lose several teeth.

William claims that he did not try to strike Ken and they had no argument.

The District Attorney's office refused to prosecute Ken because of insufficient evidence.

William is claiming $500 in medical damages and $200 in lost wages.

Case No. 2

Approve ____
Deny ____
Reasons _____

Amount:

Medical _____

Wage _____

Other _____
(Funeral or Job Retraining)

Robert Samuelson, owner of the Valley Drug Store, was shot during a robbery of the store. He died as a result of gunshot wounds to his chest. His widow, Ruth, is claiming a wage loss of $7,600 per year for five years due to her husband's death. There was $3,000 in funeral expenses.

Ruth will receive her husband's estate, which is valued at $30,000. In addition, she receives Social Security benefits of $200 per month.

Case No. 3

Approve ____
Deny ____
Reasons _____

Amount:

Medical _____

Wage _____

Other _____
(Funeral or Job Retraining)

Rocky Pineda was playing with his two children at Allstone Park, when he was approached by two young men. One of them had a gun and demanded money. Rocky attempted to explain that he could not speak much English. He tried to take his children and run when one of the young men shot him in the back. He died a few moments later as a result of the fatal gunshot wound. The suspects were never found.

The funeral expenses were $1,500, to be paid by Maria Pineda, his widow. She is 8 months pregnant and has no health insurance to cover her own medical expenses. She is claiming a $10,000 wage loss due to her husband's death.

Case No. 4

Approve ____
Deny ____
Reasons _____

Amount:

Medical _____

Wage _____

Other _____
(Funeral or Job Retraining)

Susan Jones was sitting in the Whaling Ship Bar with two of her girlfriends. They were listening to music and having a drink. Three men sat down at their table and began to talk. They all began dancing and continued drinking.

One of the men, Mike, offered Susan a ride home. She accepted. When they arrived at her apartment she invited him in for coffee. He followed her into the kitchen, grabbed a knife, and then forcibly raped her and stabbed her several times in the chest.

Her medical insurance covered her hospital bills. She stayed away from work for a week because of the psychological trauma. She is claiming $1,000 for seeing a psychiatrist and $200 in lost wages.

2 The Police Board—Policing the Police

Who polices the police? What can be done about police officers who behave improperly?

Civilian complaints about police conduct are not uncommon nowadays. Complaints range from relatively minor matters such as failure to investigate promptly a citizen's report of a crime to more serious cases involving police corruption or police brutality. Some complaints result from charges of the police using "the third degree" or mistreating people who have been taken into custody. Often these kinds of complaints come from minority groups and political protestors who have little power or influence in society.

Many people wonder: Can citizens who feel a police officer has behaved improperly file complaints against him or her? The answer is *yes*. Most police departments have a set procedure for taking citizen complaints. However, methods for handling these complaints vary.

In some cities, complaints against police officers are handled by the police department itself. The charges are investigated by other police officers or by the chief of police. In larger police departments, a special section manned by special officers usually exists to investigate citizen complaints and discipline police officers who violate the law or police department regulations. These then, are the ways in which the police "police" themselves.

In recent years, the number of citizen complaints against the police has increased. As a result, many people have seen a need to give citizens more control over police behavior. Some cities have used *citizen review boards* for this purpose. These boards are composed of citizens who represent the community and who are known and respected community members. The job of a citizen review board is to investigate complaints by the public about police misconduct and recommend to the police chief what action should be taken. Citizen review boards may or may not have the power to carry out their recommendations.

Another method of controlling police behavior involves the courts. During criminal trials, judges can determine whether a defendant was treated properly by the police. In addition, city councils and state legislatures can outlaw improper police practices and set rules for police behavior.

Improper police conduct and the methods for investigating and dealing with it are very controversial. On the one hand, the police often feel that their job is a very dangerous one which is not easily understood by citizens. While the police admit that misconduct sometimes occurs and citizen complaints must be treated seriously, they usually argue that justice is more likely to be obtained if an accused officer is investigated by other officers who know what police work is really like. Furthermore, many police officers believe citizen controls may hamper police work and that outsiders are hostile to the police.

On the other hand, many citizens argue that unless civilians exercise direct control over police behavior, the police are likely to abuse their power. As a consequence, this argument goes, citizens will lose respect for the police—and the law.

Teacher Instructions:

OBJECTIVE: **To help students analyze and evaluate police procedures for handling citizen and police department complaints against police officers.**

NOTE: *This lesson is suitable for peer teaching.*

1. Read and clarify with students the introductory materials on review boards and procedures for role playing the handling of complaints against police officers through a police Board of Rights hearing simulation.
2. Then, divide the class into groups consisting of 5-6 members each. Each group will function as a police Board of Rights whose purpose is to make decisions about disciplinary action to be taken against officers whose conduct has elicited complaints from citizens. Emphasize that each Board will deal with the same two cases and in each case the Board must (1) determine the guilt or innocence of the officers involved, and (2) if guilty, decide the punishment or penalty the officer should receive. Penalties are described in the student reading.
3. Ask students to prepare for their roles by reading the materials on the two cases to be presented to the Board.
4. At the beginning of the second class meeting, have the groups meet separately. Each group (Board) should select a chairperson. Using the questions listed under "Recommendations," students should review and discuss each case, vote on the guilt or innocence of the officer(s) involved, and decide on an appropriate penalty, if necessary. The chairperson should record the answers to the questions and the recommendations of the group. Minority opinions should also be noted by the chairperson.

5. In a large group, students should tally and discuss decisions made by each Board on each case. The chairperson from each group should explain the decision and penalties agreed upon by his/her group and the reasons for these. Minority reports should be heard.
6. Discuss each case as follows:
   (a) How did the majority of board members vote in each case?
   (b) Why did the majority vote this way? What reasons would the majority give for voting the opposite way? What values do these decisions reflect?
   (c) What penalties were assigned? Why?

Additional Recommendations

1. *Classroom Resource Persons:* Police Department Internal Affairs Division Officer; Police Union representative; ACLU representative.
2. *Field Experience:* Try to arrange a simulated Police Board of Rights hearing with the Police Department, Internal Affairs Division Office.

Simulation:

The Police Board of Rights Hearing

During the following simulation, you and the members of your class will be divided into groups of five or six. Each group should select a chairperson. Each group will function as a *Police Board of Rights*. The purpose of this police board is to review citizen complaints against police officers and discipline or penalize officers when the facts warrant it. The Police Board of Rights has the authority to recommend to the Chief of Police that an officer be disciplined or fired from the department.

You and the other Board of Rights members are all high-ranking police officers. You have already heard the evidence for and against the accused officers and you have discussed the contents of each officer's personnel file. A summary of the events of each case and the evidence before you is given below.

Your job is to evaluate the evidence presented to you, and decide on the guilt or innocence of the officers accused in two cases. You should review and discuss each case thoroughly with the other members of your group and make a decision by majority vote. Keep in mind that these cases have been thoroughly investigated by the Internal Affairs Division and the accused officers are fully aware of the charges against them.

If you determine that an accused officer is innocent, you should recommend that the complaint be dropped. If you find an officer guilty, you should decide on one of the following penalties:

1. Reprimand (warning to be placed in the officer's file);
2. Suspension up to six months with loss of pay;
3. Removal from the force.

Be prepared to discuss the reasons for your decisions during the debriefing portion of the simulation.

Case No. 1: Officers Mark Thomas and Stephen Campbell

Description of Events:

Mark Thomas has been on the force for 6 years and Stephen Campbell for 5 years. They are good friends. Recently, they met in a cocktail lounge about 1 a.m. Both were just off duty, but in uniform. They had five or six beers, and during that time Officer Campbell bought several drinks for one of the off-duty waitresses.

The two officers had a running joke about Officer Thomas wanting to buy Officer Campbell's gun. Campbell had brought the gun that evening with the intention of selling it to Thomas. Thomas kept offering more money than Campbell was willing to accept and the matter became a joke between them as they passed the gun back and forth under the table.

Meanwhile, Officer Thomas and the waitress had some disagreeable words because the waitress felt Thomas had insulted her. Thomas contends he did not mean to insult her and was only joking.

Later, when Officer Thomas left the lounge, he pretended he was going to steal a decorative keg of beer from the cocktail lounge. Thomas claims he was only joking and had no intention of stealing the keg. However, the waitress grabbed the keg and took it back to the bar. The waitress was very upset and Officer Campbell was unable to calm her down.

The next day, the waitress complained to the police department that two officers had been at the bar waving guns around . . . "a regular O.K. Corral without the shots fired." She also accused Officer Thomas of trying to steal the beer keg. In her written complaint she said both Thomas and Campbell were drunk.

The waitress and her girlfriend were later interviewed together by Internal Affairs Division investigators, and so could not be used to corroborate one another's stories. The parking lot attendant was not interviewed, nor were other witnesses found who could verify whether the officers were drunk. The bartender claimed the two officers were not drunk, but by law he must not serve intoxicated persons, so he would most likely claim they were sober. The waitress has a record of being under psychiatric care. All evidence indicates that she is completely sincere and truthful, however.

Three charges currently exist against the two officers. These are listed below. The recommendation of the captain in charge of these officers was 15 days suspension without pay for Thomas, and 10 days for Campbell. Both officers have appealed their case to the Board of Rights contending that the punishment is unjust and the investigation was improperly handled.

Personnel Records:

Officer Mark Thomas has received only one previous complaint. This was from a motorist who objected to the traffic ticket he received and said that Officer Thomas was rude and did not call him "sir" when he spoke to him. Officer Thomas' evaluation from his superiors describes him as energetic, high spirited, and a good marksman. Officer Campbell has received no previous complaints and has been found an excellent officer by his superiors.

Recommendations:

Based on your review of this information, do you feel that Officer Mark Thomas should be found guilty of any of the following: (1) exposing a firearm unnecessarily in public; (2) misappropriation of property (beer keg); (3) disturbing the peace? Should any penalty be applied? (See p.10.) If so, what? Do you feel that Officer Stephen Campbell should be found guilty of any of the charges listed above? If so, what penalty should be applied in this case?

Case No. 2: Officers Sam Allen and Mary McCrea

Description of Events:

Officers Allen and McCrea were summoned about 2 a.m. to a wealthy area of town by a resident. The resident complained of a disturbance from a loud party going on next door. The resident also stated that three people wearing black leather motorcycle jackets who apparently were attending the party had come to his door, obviously drunk. One of the three reportedly carried a kitchen knife and asked to borrow a "cup of sugar and maybe some blood."

As the officers approached the caller's house, they saw Bob Williams, 21, standing by three motorcycles. When Williams saw the officers, he joined a young girl and began walking toward the front door of the house. The officers followed Williams and ordered him and the girl to stop.

Inside the house, officers could hear the quadraphonic stereo system playing acid rock seemingly at full volume. However, the two people in front said that nearly everyone had gone home except maybe for "two or three people in the back yard." It was clear to the officers that the two were under the influence of alcohol or narcotics or both.

When asked what had been going on, the two people replied that some people had "just been listening to music" and "having a good time." The officers explained that a neighbor had called about a disturbance and someone using a knife in a threatening manner. The officers overheard the girl say, "I wonder if Dusty was at it again?"

Officers Allen and McCrea asked to speak to the owner of the house but were told that he was not at home. Then the officers asked to speak to the host or hostess and were informed that it was an open party and there was no host or hostess. The two did not know who lived at the house. They went inside leaving the officers on the front lawn.

Just then, three persons appeared from the side of the house. All were wearing black leather motorcycle jackets. Officer Sam Allen ordered the group to halt. He and Officer McCrea approached them. The trio was somewhat belligerent and said they knew nothing of the matter when questioned about the neighbor's call.

Officer Allen asked for their names. One of the group identified himself as Dusty Adams. The officer asked the group to remain until they could be identified by the complaining neighbor. They refused and said they were going to leave. At this point, Officer Allen ordered the three to stand spread-eagled with their hands on the stone wall next to the driveway. All of them began to curse.

While Officer McCrea held her gun, Officer Allen began to frisk the group. He found a kitchen knife in the boot of one. As he searched the second man, Dusty Adams turned saying, "Hey, man, listen, you don't want any trouble do you?" "Keep your hands to the wall or we'll shoot," said Officer Allen. Adams turned his back. A few moments later he dropped his hands suddenly. Officer McCrea fired, wounding Dusty in the shoulder. No weapon was found on his person.

Subsequently, a complaint was filed against Officer McCrea charging that she overreacted and used unreasonable force. The matter was investigated by Internal Affairs which referred the matter to the Board of Rights.

Officers Allen and McCrea contended that under the circumstances they had probable cause to act as they did and probable cause to believe that Dusty Adams was reaching for another weapon when he moved suddenly and removed his hands from the stone wall. Furthermore, the officers stated that the suspects had been warned, and that under the circumstances the officers had not acted unreasonably. The captain has recommended that no disciplinary action be taken against officers Allen and McCrea.

Personnel Records:

Officers Allen and McCrea have been on the force for three and two years respectively. Both are highly regarded by their superiors. Neither has received any previous complaints.

Recommendations:

In your opinion should Officer Sam Allen and/or Officer Mary McCrea be found guilty of using unreasonable force? If so, what should the penalty be?

3 Pre-Trial Release: An O.R. Program

Usually, when a person has been arrested and accused of a crime, he/she must remain in jail until the trial or else post bail. Bail is a sum of money paid to the court to assure that he/she will return for trial. Often poor people cannot afford to post bail. Because of these injustices in bail procedures, some cities have tried other pre-trial release programs. One of these programs, the Manhattan Bail Project, allowed people charged with misdemeanors and felonies to be released *without* paying bail before their trials. These arrangements were called **Own Recognizance** or O.R. Programs.

In an O.R. Program, any person who is 18 or older and is in custody may apply for release without bail. After completing the application form, the accused is interviewed by an O.R. counselor. The counselor investigates the defendant by talking to parents, employers, parole officers and others who may know him/her. Then the counselor prepares a report for the court.

Using this information, the judge makes a decision on whether the defendant will be released on O.R.

A defendant on O.R. receives help in staying within the law. For example, two days before any scheduled court appearance, the defendant is contacted by telephone, reminded of the date and time of appearance and encouraged to keep the appointment. Defendants who do not appear are contacted by telephone and urged to appear. Those who fail to appear then can be charged with another crime and lose their O.R. privileges.

O.R. programs have been very successful with defendants who cannot post bail. Such programs have also reduced government's costs for jail and family support.

Teacher Instructions:

OBJECTIVE: **To describe the criteria and procedures used in making decisions in cases involving pre-trial release.**

1. Have students read introductory reading, *An O.R. Program.*
2. To enact the O.R. simulation, follow the instructions given in the student materials.
3. When students have completed the decision-making process in this lesson, share the actual decisions made in each case. (This page.)

Additional Recommendations

1. **Classroom Resource Persons:** Invite a lawyer and/or O.R. counselor to observe and debrief the simulation.
2. **Field Experience:** Arraignment court, where bail is set by the judge.

Actual Decisions

These cases were decided in the following way:

Case No. 1: Montoya	Denied O.R.
Case No. 2: Redding	Released O.R.
Case No. 3: Carlos	Denied O.R.
Case No. 4: Porter	Released O.R.
Case No. 5: Rafferty	Released O.R.
Case No. 6: Karnow	Denied O.R.

Simulation:

Pre-Trial Release: An O.R. Hearing

Members of your class will now have an opportunity to make the kinds of decisions an O.R. counselor and a judge must make on defendants' applications for release on O.R.

Directions:

1. Divide the class into two groups. One group will serve as judges; the other will act as O.R. investigators.
2. Investigators should read the following case files on six defendants who have applied for O.R. release. (See following pages.)
3. Investigators should then write a one-paragraph recommendation on each case stating whether the defendant should be released on O.R. or should remain in jail. Give reasons for your recommendation. After completing his or her recommendations, each investigator should give them to one of the judges.

Tally the results on a chart similar to the one below.

	O.R. INVESTIGATOR			JUDGE	
Case	Request OR	Disapprove OR	Case	Grant OR	Deny OR
1	☐	☐	1	☐	☐
2	☐	☐	2	☐	☐
3	☐	☐	3	☐	☐
4	☐	☐	4	☐	☐
5	☐	☐	5	☐	☐
6	☐	☐	6	☐	☐

4. Judges should review the defendants' files and the counselors' recommendations and make a decision on each case. Judges should write their decisions on each case stating their reasons for the decision. Tally the results on a chart similar to the one below.

5. Compare the results of the two charts in a large group discussion.
   a. Which cases were recommended for O.R. release? Why? Which were not? Why?
   b. On which cases did investigators and judges

disagree? Why?

c. What standards do members of the class feel should be used to decide whether to release a defendant on O.R.? List these on the board.

6. Compare your decisions with those made by actual judges.

O.R. Case No. 1

Name: Manuel P. Montoya
Age: 19
Address: 3267 Valley View Road
Phone: None
Charge: Kidnap, Ransom and Armed Robbery
Bail set: $10,000
Represented by: Self
Race: Mexican-American
Occupation: Construction Worker
Employment: Self-employed for 2½ years. Earns $660 per month
Residence: As above
Marital Status: Married 3 years
Children: 2, wife pregnant
Parents: Manuel Montoya and Luisa Montoya. Defendant does not know address or phone number
References: None
Education: 11th grade

Criminal Record

Arrests: Runaway, 4 Juvenile Burglary, Drunk, Burglary, Possession of Marijuana—no disposition
Convictions: 2 Petty Theft—probation; Drunk/Obstructing Officer—jail; Juvenile Burglary—probation; Drunk—probation
Agency Comments:

Pomona Police Department Robbery Detective states defendant uses many aliases. No known permanent address or ties; strongly opposed to O.R. release; San Gabriel Valley DPO states defendant wanted by their jurisdictions; poor probation adjustment with a history of camp escapes, runaway from home. Recommends against O.R. release.

O.R. Case No. 2

Name: Nancy C. Redding
Age: 29
Address: 16754 Sunset Place
Mother's Phone: 821-5362
Charge: Possession of Dangerous Drugs
Bail set: $500
Represented by: Self
Race: White
Occupation: Not known
Employment: Unemployed at time of arrest. Employed 2 years as secretary. National Cash Register Company. Supervisor, William Robinson. Receives $131 a month from County Welfare.
Residence: 1406 W. Fourth Street, Los Angeles, at time of arrest
Marital Status: not known
Parents: Arthur and Freda Redding, 16754 Sunset Place, Venice
References: Mother; William Robinson
Education: Not known

Criminal Record

Arrests: LAPD—records no prior arrests.
Defendant states 1973, Possession Dangerous Drugs—released
Convictions: None
Agency Comments:

Detective, Los Angeles Police Department, states not opposed to O.R. release if other factors favorable.

O.R. Case No. 3

Name: Louis B. Carlos
Age: 18
Address: 8383 - 160th Street
Phone: 329-2523
Charge: Hit and Run, with injury
Bail Set: $2,000
Represented by: Public Defender
Race: Mexican-American
Occupation: Service (Marine Corps)
Employment: Machine operator, Delosse Bros.; worked 7 months. Earned $350 per month.
Marine Corps Reserves, reports twice a month in San Diego
Residence: As above. Lives with father and grandmother.
Marital Status: Married 8 months
Children: None
Parents: Sepulveda Carlos, address above; Mother—Mary Sandoval
References: Sgt. G.T. Morton—traffic division; Carmen Padillo, aunt; Anita Croza, sister
Education: Not known

Criminal Record:

Arrests: Los Angeles Police Department: 2 Battery—no disposition
Convictions: None
Agency Comments:

Investigating Detective states defendant's victim has been hospitalized six weeks. Possible gang activity. No comments regarding O.R. release. Probation Officer states defendant on probation in 1973. Poor reporting record; extensive juvenile arrest record. Would not recommend O.R. release.

O.R. Case No 4

Name: Marvin J. Porter
Age: 22
Address: 6774 Oak Street
Charge: Burglary
Bail Set: $2000
Represented by: Self
Race: White
Occupation: Not known
Employment: Was not employed at time of arrest. Former job: Bleeker Tools, Perry St., Brea. About 4

months. Ralph Blank, Supervisor. Application at National Airways.

Residence: As above. Lives with mother, 2 brothers, 2 sisters. Father deceased

Marital Status: Single

Parents: Esther Porter

References: Ralph Blank, Bleeker Tools; mother; brother at National Airways

Education: 11th Grade

Criminal record:

Arrests: Burglary—dismissed

Convictions: Loitering—1 year suspended sentence—$100 fine; Marijuana—suspended sentence; Petty Theft—22 days in jail; Resisting Arrest—30 days in jail; Possession of Dangerous Drugs—California Youth Authority—parole expires 7/74

Agency Comments:

Burglary Detective states due to defendant's involvement with 2 co-defendants who are prime police problems, opposes O.R. release. Parole Officer states prior record has been excessive but believes this is due to neighborhood influence and associates. No police or community problems for past 1 year. Doing well on parole. Recommends O.R. release.

O.R. Case No. 5

Name: Frances Rafferty

Age: 23

Address: 416 W. 130th Street

Phone: 625-7500

Charge: Forgery

Bail Set: $2,000

Represented by: Public Defender

Race: Negro

Occupation: Nursing assistant

Employment: Nurse's aide, Veterans Hospital, $410 per month. Employed 6 months at time of arrest. Defendant states will return to VA Hospital for employment

Residence: 4705 Clermont, No. 16, 14 years. Lives with sister.

Marital Status: Single

Parents: Arlene Rafferty, 416 W. 130th Street; 625-7500

References: Mother, grandmother, friends

Education: 1 year college

Criminal Record:

Arrests: Traffic violation—call dropped—dismissed; Child-Stealing—case dropped

Convictions: Driving under influence of liquor—jail

Agency Comments:

Investigator, Police Department, Bunco Forgery Division states no objection to O.R. release if other factors favorable.

O.R. Case No. 6

Name: Stanley M. Karnow

Age: 38

Address: 1438 E. 30th Street

Phone: 241-0676

Charge: Sales of Narcotics

Bail Set: $5,000

Represented by: Public Defender

Race: Negro

Occupation: Disc Jockey

Employment: Jockey Club, Wesley Parks, owner; earns $400 per month; Employer states can continue

Residence: As above. Lived at same address 27 years, with brother and cousin

Marital status: Single

Parents: Deceased

References: John Karnow, brother; Frank Moore, cousin

Education: 11th grade

Criminal Record:

Arrests: Robbery, Traffic, Gambling, 5 Theft/Burglary, 3 Possession Marijuana/Dangerous Drugs 6 Sales Marijuana/Dangerous Drugs

Convictions: 2 Gambling—fine; 2 Theft—fine/jail; 2 Possession/Sale Narcotics—jail/fine; 2 Traffic/Drunk—jail; Forgery—jail/probation

Agency Comments:

Narcotics Detective, Police Department, states opposed to O.R. release. Defendant had quantity of narcotics in possession when arrested; sales involved; has extensive criminal record.

4 Plea Bargaining

A plea bargain is an agreement between the defense and prosecuting attorneys made with the consent of the judge and the defendant. In a plea bargain, the defendant agrees to plead guilty to a crime that is less serious than the one charged rather than go to trial. The judge then sentences the defendant immediately. A plea bargain allows a case to be completed quickly and the defendant usually receives a light sentence.

In the simulation which follows you will participate in the plea bargaining process in order to learn more about the ways plea bargains are negotiated. The purpose of the game is to learn about plea bargaining and to practice representing your own point of view. Read the directions, enact the simulation, and then discuss it using the questions provided at the end of the lesson. If possible, you may wish to invite a deputy district attorney and/or public defender to visit the class and discuss the plea bargaining process.

Teacher Instructions:

OBJECTIVE: **To identify and define procedures related to plea bargaining**

1. Have students read the introduction to plea bargaining. Provide sufficient time to insure understanding of this controversial legal process.
2. Follow the directions provided in the student reading.
3. After the game is completed, ask students to discuss their views on plea bargaining (orally or written) using the following question: "In your opinion, does plea bargaining help or hinder a defendant in securing his/her rights to due process?"

Additional Recommendations

1. **Classroom Resource Persons:** Deputy District Attorney and/or Public Defender, private defense attorney or judge might be invited to observe the activity and debrief it.
2. **Field Experiences:** Plea bargaining is not a public procedure. However, students might identify the results of a plea bargain in a preliminary hearing. Students might also interview justice system personnel involved in plea bargaining.

Simulation:

Plea Bargaining Game

1. The members of the class should divide into five small groups.
2. Number the groups 1-5.
3. Members of each group should decide among themselves who will represent the following points of view: defense attorney, prosecuting attorney, and judge. Two people may represent the same point of view, if necessary.
   You have arranged a meeting today to discuss a plea bargain on a case assigned to you. Because your schedule is crowded, you have only fifteen minutes for this meeting.
4. Each group should study the case assigned on the following pages:
   Group 1: The Case of *People vs. Rosemary J. Spelker*
   Group 2: The Case of *People vs. Adam J. Jackson*
   Group 3: The Case of *People vs. Warren Kellar*
   Group 4: The Case of *People vs. William H. Garcia*
   Group 5: The Case of *People vs. John David Gray*
5. After the members of your group have studied the case, discuss it. Make a decision about what plea bargain should be arranged. Remember: Each member of the group should represent only one point of view. The judge will act as moderator and spokesperson for the group. Be prepared to explain the reasons for your decision. If time remains, read the other cases and discuss them.
6. Judges should report the decision of their group and the reasons for it to the rest of the class.
7. All 5 groups should answer the three discussion questions on page 11.

Petty Theft

Group 1: The Case of *People vs. Rosemary J. Spelker*

Summary of Facts of the Case

Rosemary J. Spelker was arrested for petty theft. Security officers in the store noticed her take a blouse from the sportswear department and conceal it in her shopping bag. Ms. Spelker claims she did not intend to steal the blouse. She says she was preoccupied and inadvertently put it in her shopping bag. Store detectives believe that Ms. Spelker planned the theft.

Other Circumstances

Ms. Spelker will begin a new job soon. She does not want her employer to learn of this incident. She has offered to compensate the department store. The department store, on the other hand, has had a great deal of trouble with shoplifters. The store manager recently hired security guards. One of the new guards caught Ms. Spelker. The store wants to press charges. The manager believes that if he makes an example of this case, shoplifters will be deterred in the future.

Plea Bargain

Consider the following pleas:

- Dismissing the charges
- Allowing Rosemary Spelker to compensate the store for the articles and/or putting Spelker on probation and/or letting Spelker perform alternative services such as lecturing to school children about the wrong involved in shoplifting.

What plea bargain is arranged? _____

_____

_____

Discussion Questions

1. What was your reaction to the plea bargaining session? Why?
2. In your opinion, what are the advantages and disadvantages of plea bargaining?
3. In your opinion, does plea bargaining help or hinder a defendant in securing his/her rights to due process? Write a paragraph explaining your answer.

Assault & Battery

Group 2: The Case of *People vs. Adam J. Jackson*

Summary of Facts of the Case

Adam J. Jackson lived in his neighborhood for many years. Recently new neighbors had moved in next door. The neighbors owned motorcycles which their children rode frequently. The children liked to ride early in the morning and late in the evening as well as during the day. The noise of the motorcycles disturbed Mr. Jackson. He asked the neighbors to ride their motorcycles in another area. The neighbors refused, saying, "It's a free country." After many requests, Jackson called on his neighbors and told them that the noise must stop or he would take legal action. An argument ensued. During the argument, Jackson threatened his neighbor. He then punched his neighbor with his fist. Later, Jackson was arrested for assault and battery.

Other Circumstances

Jackson is studying to be a teacher. He feels his chances of getting a job in the future would be harmed by a criminal record. He knows he lost his temper. He would therefore like to have the charges dismissed or perform a service for the city instead of receiving a jail sentence. The district attorney, on the other hand, has been elected to "clean up neighborhood violence." He wants to press the case. Jackson's attorney hopes to arrange a plea bargain in which Jackson might be charged with disturbing the peace.

Plea Bargain

Consider the following pleas:

- Dismissing the charges
- Reducing the charge to disturbing the peace
- And/or putting Jackson on probation
- And/or letting Jackson perform alternative services, such as planting flowers in the city parks

What Plea Bargain is Arranged? _____

_____

_____

Selling Illegal Drugs

Group 3: The Case of *People vs. Warren Kellar*

Summary of Facts of the Case

Warren Kellar has used illegal drugs for a long time. Recently, he had begun to sell them. One evening he met a "customer" at a hamburger stand and the two drove to a nearby parking lot. There, Kellar sold his customer some cocaine. As they drove back to the hamburger stand, the police stopped Kellar, searched the car, and discovered the illegal drug. Kellar was arrested for selling illegal drugs.

Other Circumstances

Kellar has no previous record for selling illegal drugs. However, he has been arrested for possession of marijuana several times. The district attorney is eager to remove "hard" drugs from the streets by prosecuting any drug dealers to the fullest extent of the law. However, the court schedule is overcrowded and it will be many months before Kellar can be brought to trial. The district attorney is therefore willing to arrange a plea bargain in order to complete the case quickly.

Plea Bargain

Consider the following pleas:

- Possession of narcotics for sale (Felony)
- Possession of narcotics (Felony)
- Driving while under the influence of an intoxicating substance (Misdemeanor)

What Plea Bargain is Arranged? _____

_____

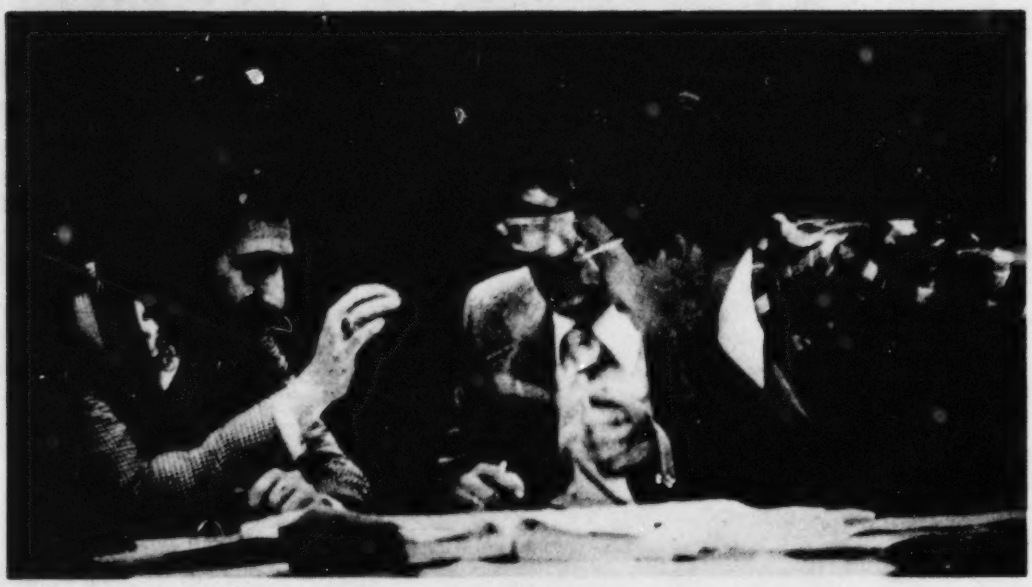
_____

Assault With a Deadly Weapon

Group 4: The Case of *People vs. William H. Garcia*

Summary of Facts of the Case

Recently, William H. Garcia attended a large party to



celebrate the wedding of his friends. At the party, many people drank the strong punch. About a dozen people, including William, became drunk. Somehow, a fight broke out, and William became involved. One of the men involved in the fight had a knife. One of the men in the fight was stabbed and had to be taken to the hospital. The wounded man later died from a reaction to the drugs administered by the hospital and the alcohol in his bloodstream and from his wounds. The men in the fight were arrested for assault with a deadly weapon.

Other Circumstances

William Garcia admits he was drunk at the time of the fight. Although he has never been arrested before, he is known to have a violent temper. Garcia claims that he did not use the knife himself and that he was provoked into the fight. Garcia knows the people who were involved in the fight and who carried the knife. The district attorney hopes to offer Garcia a plea bargain in exchange for information about the other people involved in the fight. Garcia is planning to be married soon. He does not want to begin married life with a criminal record. He feels that by going to trial he might be able to clear his name.

Plea Bargain

Consider the following pleas:

- Assault with a deadly weapon (Felony/6 months-1 year)
- Assault and battery (Misdemeanor/0-1 year in jail, up to $10,000 fine)
- Disturbing the Peace (Misdemeanor/0-6 months in jail, up to $500 fine)
- Probation
- Dismissing the charges

What plea bargain is arranged? _____

_____

_____

Felony—Murder

Group 5: The Case of *People vs. John David Gray*

Summary of the Facts of the Case

John and several friends went to the movies on Saturday afternoon. One of the young men had a gun. After the movie, the young men boarded a bus. During the bus ride, the young man who carried the gun became involved in an argument with one of the passengers. The argument concerned money. John and the others joined in the argument. A scuffle developed between the passenger and the young men. When the bus came to a stop, most of the passengers got off. However, John's friend drew the gun and shot the passenger before leaving the scene. The passenger died. John escaped. John helped hide the gun. Later John and his friends were arrested for felony—murder, a crime which has a penalty of 5 years to life in prison.

Other Circumstances

John has been in trouble many times before. This is the most serious crime with which he has ever been charged. John is willing to accept a plea bargain. The district attorney feels John is dangerous and should be prosecuted to the fullest extent possible. However, he would like to dispose of the case quickly and is willing to make a plea bargain.

Plea Bargain

Consider the following pleas:

- Armed Robbery (Felony/15 years to life in prison if someone is injured; up to 5 years in prison if no one is injured)
- Robbery (Felony/1-5 years in prison)
- Involuntary Manslaughter (0-15 years in prison)
- Attempted Kidnapping (1-25 years in prison)

What plea bargain is arranged? _____

_____

_____

5 The Treatment of Witnesses (Case studies—discussion activity)

In a large courthouse, where many cases have to be scheduled into a limited number of trial courts, witnesses are usually directed by their subpoenas to report first to a *Master Calendar Court*. There, the Master Calendar Court Judge assigns cases to courtrooms for trial.

In the Master Calendar Court, both the prosecution and defense attorneys try to meet briefly with their witnesses, and report to the Master Calendar Judge on each of their cases.

At such times the attorneys are torn between two conflicting pressures: On the one hand, they realize that the witnesses who they have subpoenaed to come to the Master Calendar Court today are very important. Witnesses are necessary to prosecute or defend a case successfully. On the other hand, attorneys are very busy and do not have much time to talk with their witnesses. In addition, because there are so many cases, witnesses must often wait hours or even days before their cases go to trial. As you read and discuss the following case studies you will have an opportunity to learn more about experiences and problems of witnesses in court trials.

Teacher Instructions:

OBJECTIVE: **To identify and describe the problems witnesses encounter in the justice system**

1. Ask students why witnesses are important in a trial. What would happen if there were no witnesses at a trial?
2. Ask students to read the introduction to the case studies. Clarify any questions.
3. The class can either be divided into small groups or discuss the case studies as a large group. Use the following questions to debrief the activity.

Discussion Questions:

1. Why do you think so few witnesses "made it" to trial?
2. The witnesses who were excused by the Master Calendar Court Judge or an attorney were never needed. Yet, these witnesses still had to come to the courthouse—some more than once.
   How might these people feel after being told their testimony would not be needed? In what ways were these witnesses' lives disrupted?
3. In your opinion, were the delays which caused so many of the witnesses to wait justified? Why or why not?
4. If the incidents described in these cases had actually occurred in your life, would you have volunteered to come forward as a witness? Why or why not? If not, under what circumstances would you be a witness in a criminal case?
5. Based on your experience in this game, what do you think could be done to improve the way witnesses are treated by the criminal justice system?

Additional Recommendations

1. **Classroom Resource Persons:** Ask your students if they know anyone who has served as a trial witness. Such persons might agree to come to the class to share their experience.
2. **Field Experiences:** Students may wish to observe the treatment of witnesses and the testimony of witnesses during their visits to the courthouse.

Case 1: A Prosecuting Witness

You were standing on your porch one afternoon talking to some friends. A stranger carrying a knife appeared and threatened you and your friends. Then, the stranger moved on down the street. A few minutes later, he entered a neighbor's yard and stabbed the woman, who was working in her garden. You called the police. The man was arrested a few blocks away from your home.

You have been subpoenaed as a witness for the prosecution in this case. You appeared in the Master Calendar Court yesterday and waited all day for the case to be assigned to a trial court. Today, you appeared again and waited to go to trial. Once you were in the courtroom, the defense lawyer said, "Your honor, my client is ill; I wish to move for a continuance" (to delay the trial). The judge orders the case continued and tells all witnesses to report back to the court in three weeks.

Case 2: A Prosecution Witness

You parked your car in front of a friend's house at 8

p.m. When you came out at 8:45 your car was gone. You reported your car stolen to the police. Later that evening two people were arrested driving your car. They were charged with Grand Theft Auto.

You have been subpoenaed as a witness for the prosecution in this case. You hope that the persons caught driving your car are quickly convicted and get what they deserve.

You have been told to be seated and wait for an assignment to a trial court. After two days you are assigned a courtroom. The prosecuting attorney says, "Your honor, the arresting officer is on vacation. We move for a continuance." The judge says, "Since the prosecution is unable to proceed, the case is dismissed and all witnesses are excused."

Case 3: A Defense Witness

One day you were riding on a city bus. At one stop a male factory worker attempted to board the bus with a transfer slip. The bus driver told the man that the transfer had expired. The man said the transfer was still good. The two argued for several minutes. Then the bus driver stood up, and started to push the man out the door. At this point the man swung his lunch pail at the bus driver and missed. The factory worker was arrested for assault.

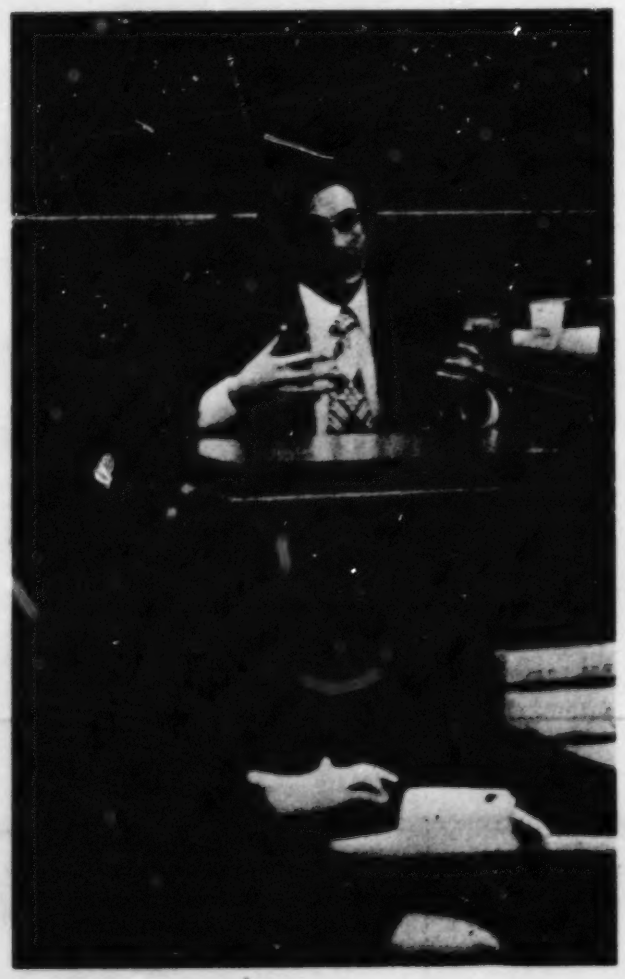
You have been subpoenaed as a witness for the defense in this case. You have waited in the Master Calendar Court during the past three days for the case to be assigned to a trial court. This is the fourth day you have come to the Master Calendar Court.

Today, however, the bus driver has failed to appear. The judge has given the prosecutor two hours to bring his witness in. After two hours, the prosecutor still cannot find the bus driver and asks the judge for a continuance. The judge says, "I gave you two hours to find your witness. Case dismissed and all witnesses are excused."

Case 4: A Defense Witness

A seventy-five year old woman practices astrology, health foods, and occult healing arts. She lives in a community heavily populated with senior citizens. Occasionally she makes money using her knowledge to try to help people to feel better. Her treatments consist of massage, herbs, vitamins, and magic potions. A dissatisfied client called the police, and they investigated the woman. She was arrested for practicing medicine without a license.

You are 80 years old and are a satisfied client of this woman. You have been subpoenaed as a witness for the defense in this case. The case has been continued twice in the Master Calendar Court. This is your third day in court waiting for the trial to begin. It takes you 1½ hours by bus to get to the courthouse. Today you have been told the case will be assigned to the next available trial court. You and the other witnesses must remain in the courthouse and wait to be called. Five hours later, at 3 p.m., you are assigned a trial court, but the trial is recessed until tomorrow because it is so late in the day. The next day you return to court to find out that the elderly woman has decided to plead guilty to a lesser charge and there will be no trial.



6 Appellate Court (Criminal Appeal)

Role-Play

What is an appellate court? An appellate court is somewhat different from a criminal trial court.

For example, suppose you are accused of a crime. You are tried, found guilty, and sentenced to prison. Suppose, further, the facts of your case were accurately presented in court. However, you still feel that your case was not handled fairly because the judge refused to allow certain evidence favorable to you to be presented. Although your lawyer did object, the judge overruled the objection and your trial continued.

Now you want to **appeal** your case to a higher court. Your attorney has prepared the necessary papers, called **briefs,** for the appeals court judges to read. The briefs contain the facts of your case, laws related to it, and your lawyer's arguments contending that you received an unfair trial because you were not allowed to present certain evidence. Your lawyer says your rights to a fair trial have been violated and that you should receive a new trial. This question—whether your rights to a fair trial have been violated—is called **question of law.**

The appeals court judges, or justices, are concerned merely with whether the **law** was unfair to you. They are not concerned with the facts of your case or with whether you are guilty or not guilty. They are concerned with the facts surrounding how your case was handled in the courtroom—that is, with the procedures that were used.

Teacher Instructions

OBJECTIVE: **To identify cases which involve questions of law and understand the Appellate Court process.**

1. Ask students to read the introduction to this activity, *What is an Appellate Court?*
2. Divide the members of the class into groups of five justices. Each group should read the summaries of Case 1 and Case 2 and make a decision on each. It is not necessary that all the justices agree. However, each group should be prepared to explain the reasons for its decision(s).
3. After each group of justices has discussed and made a decision on each case, the class should assemble as a large group to discuss the following questions.

Discussion Questions:

1. What decision was made by each group on each case? Why?
2. Were some groups split on their decisions? If so, why?
3. How would you describe the differences and similarities between an appeals case and criminal court case?
4. In what ways do appeals cases help form the law?
5. What are some advantages of the appeals process? What might happen if we did not have an appeals process?
6. Why would it be unconstitutional for an appeals court to examine the evidence of a case to decide on the guilt or innocence of a defendant?

Additional Recommendations

1. **Classroom Resource Persons:** Lawyer with appeals court experience; Appeals Court Judge.
2. **Field Experiences:** Visit an Appellate Court. What differences do students note between appellate court and a trial court?

Appellate Court

Role Play: Deciding Questions of Law

Now that you understand the kinds of questions which concern the appeals court, examine the two appeals cases below. To do so, divide the members of the class into groups of five justices. Each group should read the summaries of Case 1 and Case 2 and make a decision on each. It is not necessary that all the justices agree. However, each group should be prepared to explain the reasons for its decision or decisions.

Case 1: Watson v. McCarthy

Background

The notorious Tate-LaBianca murders were committed by the "Manson Family" in Los Angeles in August 1969. The following November, Charles Watson was arrested in Texas for his part in the murders.

Legally, when authorities from one state wish to arrest someone in another state, they must obtain an **extradition order,** a legal document which allows the arrested person to be taken away.

For 285 days after his arrest, Charles Watson fought the extradition order by appealing to the Texas courts. Finally, however, he was extradited to California where he was tried for eight counts of first degree murder, found guilty, and sentenced to death. Later, when the death penalty was declared unconstitutional, his sentence was changed to life in prison for each of the eight counts of murder. The sentences were to be served at the same time. Watson was then delivered to Warden McCarthy of the California Men's Colony, a prison near San Luis Obispo, California.

The Law

A California law states that:

1. A person who is convicted of a felony may receive credit for the time he/she has spent in jail from the time of arrest to sentencing.
2. Credit for this time is given only when the defendant was in custody for the crime or crimes of which he/she is ultimately convicted.

Role Play: Deciding Questions of Law

The Question of Law

Watson requested 285 days credit on his life sentence for the time he spent in a Texas jail while fighting extradition. The superior court first granted Watson credit for this time. However, Warden McCarthy appealed this decision saying Watson was a "fugitive from justice" during the time he fought extradition and was not actually in custody. Therefore, McCarthy contended, Watson was not entitled to credit for time served.

Is Watson legally entitled to credit for time served for the time he spent in a Texas jail while fighting extradition?

Arguments

1. Watson should not receive credit for time served while in custody and fighting extradition.
   a. Watson was a fugitive from justice and was trying to evade arrest. He continued to evade arrest for 285 days.
   b. Although Watson was in custody in a jail, he was fighting extradition and was still a fugitive. Credit for time in jail should not be given to such cases.
   c. Watson knew that he was wanted and was merely trying to avoid prosecution. The law was not intended to protect such actions. To allow Watson credit in this case would encourage others to flee from justice.
   d. Extradition is merely for the purpose of inquiry. It does not prove guilt or innocence but only seeks to determine whether the accused was in the location of the crime at the time the crime was committed. Watson's stay in Texas was by his own choice, not because he was in custody.
   e. Watson should not receive credit for Texas jail time because his case does not fall within the provisions of the California law.
2. Watson should receive credit for time served while in custody and fighting extradition.
   a. The law states that a person who spends time in any jail for reasons attributable to charges arising from a crime for which the defendant has been accused and convicted may receive credit. Watson's case fits these requirements and it does not matter that he was in a Texas prison.
   b. Watson's imprisonment was *directly attributable* to charges arising from the same criminal acts of which he was convicted. The law covers persons resisting extradition.

   The refusal to give Watson credit may well be a desire to "punish" him as a member of the Manson family. In this case, we are concerned only with the meaning of the law, not with the personalities involved in the case itself.
   d. Watson is entitled under the Constitution to resist extradition. The fact that he did so should not and does not make him ineligible to receive credit for time served.

What is your decision?

Case 2: In re Roger G.

Background

On March 22, 1973, Grace Capistrano was shot to death in the parking lot of Centinela Community Hospital. Roger, 16, was arrested for the crime and interrogated by the police on September 5. During the interrogation Roger confessed to participating in the crime but not to firing the fatal bullet. The case was adjudicated in juvenile court and Roger was found delinquent and made a ward of the court based on his confession and other evidence. Later, the decision in Roger's case was appealed on the grounds that his confession was involuntary and that the police had made threats and promises while questioning Roger which were not within the permissible bounds of police conduct.

The Law

A confession is considered involuntary and inadmissible if it is secured by an express or implied promise of benefit beyond that naturally flowing from a truthful statement or by an express or implied threat that the failure to make a statement will result in consequences adverse to the suspect.

The Question of Law

Was Roger's confession voluntary (and therefore admissible) or involuntary (and therefore inadmissible)?

Arguments

1. Roger's confession was voluntary and therefore admissible. The transcript of the tape of the interrogation is shown below. In the transcript, it is clear that Roger was informed of and knew his rights:

Suspect of D.R. No. 73-3654.
"Roger. This is Detective Varey, Inglewood Police Department; Detective Long, Inglewood Police department. What we are going to do now is advise you of your rights, and after each right, I would like you to answer 'yes' or 'no,' you do understand it or you do not understand it. Okay?
"A Yeah.
"Q Number 1. You have the right to remain silent. Do you understand that?
"A Yup.
"Q Yes?
"A You [sic]
"Q Number 2. Anything you say can and will be used against you in a court of law. Do you understand that?
"A Yeah.
"Q Number 3. You have a right to talk to the lawyer before we talk to you and have him present while we talk to you. Do you understand that?
"A Yup.
"Q Number 4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning free of charge. Do you understand that?
"A You [sic]
"Q Do you understand each of the rights explained to you?
"A Yup.
"Q Do you want to talk about this case or not?
"A Yeah. I don't even know what I'm arrested for.
"Q We'll tell you. Do you want a lawyer or not?
"A Naw.
"Q Do you?
"A Huh.
"Q Okay. That means no?
"A Uhhuh.
"Q Now, can you say yes or no?
"A No.
"Q Thank you. Move a little closer. Okay. Roger, you have been arrested for suspicion of homicide.
"A That's murder, huh." (Nov. 1975)

2. Roger's confession was involuntary and therefore inadmissible. The excerpts from the tape of the interrogation shown below make clear that police used threats and promises to secure a confession:

The first 15 pages of the transcript disclose Roger's efforts to avoid confessing to the crime and claim an inability to remember. The interrogation officer then asked: "How old are you? Sixteen? Seventeen? Seventeen?" and then added: "You know, you could be in jail until you are about thirty-five. That's a long time." Another officer interjected: "And then some, 'cause he might be certified to adult court. . . . And you can be certified adult and get a life sentence on it too." The original officer said: "So let's have it out man. Let's get it straight now. You're still a juvenile yet. You get you certified an adult, you're not gonna be treated as a juvenile: you're gonna be treated as an adult. They sure hold them tight boy. . . ."

When Roger said, "I've gotta see 'em [the other two accused juveniles] before I say anything," an interrogating officer replied: "You ain't gonna see nobody except the court if you want to be that way. I'd see you go to adult court uh, you ain't gonna ride Richard's raft if ah." Roger said, "Oh, yeah?" The officer stated: "You know, if Richard squeezed the trigger and you didn't, man, I ain't gonna ride his rap."

The interrogating officer continued: "We ain't askin' you to do the squealing, all we want is your version of what took place. Because, uh, when you go to jail, do time, you're gonna be your own time. You're not gonna be Richard's time, you're not gonna do Jerry's time, you're gonna be your own time. It's your life, man. It's shades. It could be seven or eight or ten or life, you know, sentence out of your life; not theirs. You're the guy—number one—you'd better start thinking about and talkin' about. We don't want to hear about what they did; only what you did."

Another officer entered the questioning. He said: "Say you and I went to a liquor store, and I have a gun, and you don't. . . . And we go in there and all intents and purposes of robbing the liquor store. Okay? . . . I'm just giving you a for instance. . . . Okay? You and I go in a liquor store and you're gonna pull the job. So, we get in there and get the money and the liquor store guy reaches under the counter, so I blast him. . . . And, tell you and hey, man let's make it. Okay, I killed the guy." Roger answered: "You gonna get the shades, the shades?" The officer replied: "That's right. Exactly what I was going to tell you." Roger said: "Well, I'll get jes' as much time as he do won't I?"

Another officer responded: "That's exactly right." The previous officer added: "But it's gonna help you out for a chance of probation or getting parole if you are honest about the thing." Roger said, "Oh, yeah?" The officer continued: "Tell your side of it, because if you go in there hard-nosed and just lie, and try to cover up, do you think we'd give you a chance at probation or parole? No way."

Roger asked: "What is parole?" The officer responded, "Well, that's getting out of jail—you know, you might be six months and get out the rest on parole. And do the rest of the time at home. You understand, well, parole's like probation. A parole, you say, well, you see, ah, I get sentenced too, for robbery. They give me a five-to-life sentence. Okay? . . . I go to jail and I serve a year or to 18 months. Okay. For the next five years, they're gonna put me on parole and let me out, and I'm gonna do my time outside. I'm still really technically in jail, but I'm not out a . . . doing everything I do normally, but I've gotta behave myself, 'cause if I get involved in any more trouble, I go right back and serve that five years out. But if I go to jail hard-nosed 'n' what-have-you, do you think the Parole Board is gonna listen to me? No, man. They're make me do probably the whole damn five years, or more. You know."

Roger answered: "You think I can get parole. I mean, a, whatcha call it?" The officer responded: "Not promising it. There's a possibility. But if you go in there with, if, if I was sittin' here and shuckin' with you, and he and I pulled a caper, and he's tellin' me the straight poop, then you're surely gonna listen to him and try to help him more than you or me."

What is your decision?

7 Runaway—
Simulation

Most children think of running away from home at one time or another, usually because of family problems. Although it is difficult to generalize about runaways, authorities do have some facts. The average age of a runaway is 16. Thirty-six percent of all runaways are boys, although many boys are not reported because of the common attitude that boys can take care of themselves. Most runaways find refuge close to their homes—sometimes in their own community. Many go to runaway centers where counseling, shelter, food, and clothing are available. Girls who run away have special problems. For example, they may meet someone who promises to "take care of them" and find that they are expected to become prostitutes. Both boys and girls who have run away have been the victims of unscrupulous people. Many have gotten hurt and some have been murdered.

Teacher Instructions

OBJECTIVE: **To identify and define possible solutions to the runaway problem.**

Note: *This lesson is suitable for peer teaching.*

1. Background Information: The following information is intended to assist teachers in implementing this lesson in their classrooms.
   - This role-playing activity offers students an opportunity to learn about the problems of runaways, the reasons young people run away from home, the feelings and viewpoints of runaways, their families, and the juvenile probation officers who must try to help them.
   - Children run away for different reasons: lack of acceptance; lack of parental love; sibling rivalry; child abuse; overprotective parents; alcoholism in the family; desire for adventure; lack of communication in the family. Familial discord seems to be the common denominator in most runaway cases.
   - Two approaches to handling runaways are described below:

     Approach No. 1: The Family Conference

     This method is used extensively by the Alameda County Probation Department in Oakland, California. It is based on the contention that the runaway problem is directly related to family problems. To solve the problem of the runaway, one must first work with the family. In working with the family, the main objective is to make the family take responsibility for the runaway. In the family conference the family is asked to begin to formulate options as to how to solve the runaway problem.

     Approach No. 2: Individual Counseling

     Another approach to solving the problem of runaways is to deal with the juvenile runaway individually. For example, Huckleberry House in San Francisco provides a temporary home for runaways. While living at Huckleberry House, runaways participate in group counseling and receive peer support as they attempt to work out their problems.
2. Ask a student to read the introduction to the role play activity aloud.
3. Let students enact the role plays in large or small group settings. Directions for the role play are in the student materials.
4. After the role plays are completed, debrief the session using the discussion questions provided at the end of the role play.

   Teachers may also wish to use the debriefing questions suggested below:
   - Ask members from each group to describe the runaway conference they participated in. What were some of the issues involved? How were the conflicts resolved? If conflicts or problems were not resolved, why did this happen?
   - What were your feelings when you played the runaway? The parent? Another family member? The juvenile probation officer?
   - Were the decisions of the P.O. fair in your case? Why or why not?
   - Based on your experience in the conferences, what do you believe are the main reasons young people run away from home?
   - What possible solutions can you think of for the runaway problem? What do you think should be done for/with runaways?
   - When should runaways *not* be sent home? Why? Where should they go in these situations?

Additional Recommendations

1. **Classroom Resource Persons:** Invite police and/or probation officers who handle runaway cases to visit the class during the role plays and debriefing session.
2. **Field Experiences:** Juvenile Diversion Project Center; Runaway Center.

Runaway

Deciding What to Do with Runaways: You Be the Probation Officer

Runaways are often found when they are picked up by the police for curfew violation or another minor offense. After police identify a runaway, the young person is turned over to a Juvenile Probation Officer. This officer has two days to decide what to do with each runaway who has been picked up. Usually, he/she schedules a family conference to help resolve conflicts which may have led to the child's leaving home. He/she tries to find solutions to the problem.

In the activity which follows, you will have an opportunity to role play a family meeting with a probation officer. Members of the class should choose the roles listed in each case below and then complete the role play. After each role play, the class should discuss what happened using the questions provided at the end of this lesson.

***Probation Officers:* Role Description**

In each case, probation officers should try to resolve the present conflict concerning the runaway. You will conduct a family conference. Your primary goal is to help the family stay together and to send the runaway home. You must try to *make the family feel responsible for solving the problem* of the runaway. If it is impossible to send the child home because the parents do not want him/her, because he/she has been abused, or for some other reason, you might try to get the parents to agree to place their child with a relative, in a foster home or group home. If the family refuses to do *anything*, you may have to place the child under the care of the county and detain him or her in Juvenile Hall.

During the family conference, you can ask members of the family questions such as:

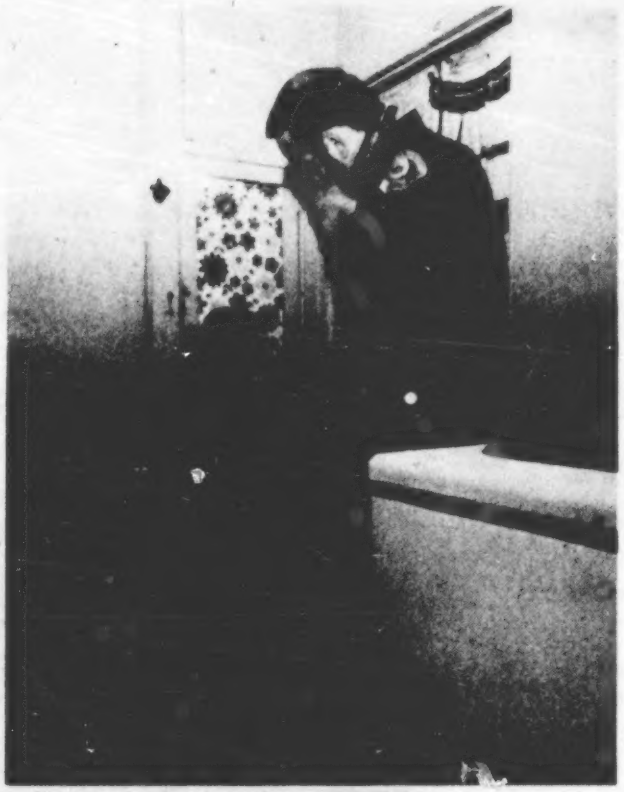
Why are you here?
How do you feel about this situation?
When did this problem start?
What have you done in the past that worked?
What do you want to do now?
What do you think would help?

At the close of the conference, inform the family what action you are going to take in the case. You may make any of the following decisions:

1. Send the runaway home with parents. No further action.
2. Send the runaway home with follow-up counseling through Probation Department.
3. Place the runaway at the home of a relative or friend pending juvenile court disposition.
4. Place the runaway in a foster home pending juvenile court disposition.
5. Place the runaway in a private group home for troubled youth pending juvenile court disposition.

How to Proceed

1. Role players should prepare their roles individually. Study the case descriptions.
2. Probation officer should call the conference together. He may open the conference by asking a question or inviting the family members to talk.



3. Probation officers should try to discover the conflicts in the family and resolve them by discussion. Allow 5-10 minutes for each role play.
4. Probation officers should make a decision in each case.
5. Discuss the role play using the discussion questions following the lesson.

Case 1

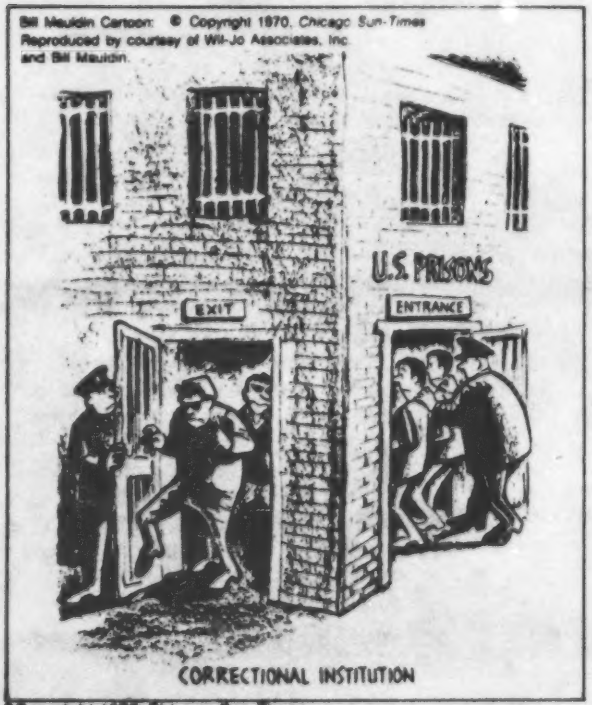
Sylvia (Age 15)	"My parents don't care about me. They never really wanted to have children. They wouldn't even want me back and are glad I am gone."
• Sylvia	Develop your role based on the above information. Try to be as realistic as possible and stay in character during the family conference.
• Sylvia's Mother & Father	Develop your roles according to the above information. Try to be as realistic as possible and stay in character during the family conference. Be prepared to discuss your feelings about your child who has become a runaway.
• Juvenile Probation Officer	See role description.

Case 2

John (Age 17)	"My father is an alcoholic. When he comes home he beats me up and pushes me around like a toy. My parents are always fighting. No peace. I can't take it any longer."
• John	Develop your role based on the above information. Try to be as realistic as possible and stay in character during the family conference.
• John's Mother & Father	Develop your roles according to the above information. Try to be as realistic as possible while staying in character during the family conference. Be prepared to discuss your feelings about your child who has become a runaway.
• Juvenile Probation Officer	See role description.

Case 3

Emily (Age 16)	"My parents won't let me breathe. I can't do anything with my friends. They don't trust me, and are always on my back. Nag, nag, nag, everyone in our house is always fighting."
• Emily	Develop your role based on the above information. Try to be as realistic as possible and stay in character during the family conference.



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Bill Mauldin.

• Emily's Mother & Father	Develop your roles according to the above information. Try to be as realistic as possible while staying in character during the family conference. Be prepared to discuss your feelings about your child who has become a runaway.
• Emily's Sister	Develop your role according to the above information. Try to be as realistic as possible while staying in character during the family conference. Be prepared to talk about your sister who has run away.
• Juvenile Probation Officer	See role description.

Case 4

Dave (Age 15)	"I wanted some adventure. I don't want people running my life, telling me what to do all the time. I want to be on my own—to find out who I really am."
• Dave	Develop your role based on the above information. Try to be as realistic as possible and stay in character during the family conference.
• Dave's Mother & Father	Develop your roles according to the above information. Try to be as realistic as possible while staying in character during the family conference. Be prepared to discuss your feelings about your child who has become a runaway.
• Dave's Brother	Develop your role according to the above information. Try to be as realistic as possible while staying in character during the family conference. Talk about your brother who has run away.
• Juvenile Probation Officer	See role description.

Discussion Questions:

1. What decision did the probation officer make in each case? Why? Do you agree or disagree with his/her decision? Why?
2. In your opinion, are any of the youths in these cases delinquent? Why or why not?
3. From your reading and experience, how important would you say family life is in contributing to juvenile delinquency?
4. In your opinion, are there youngsters who would get in trouble no matter what their family life was like? If so, what other factors might account for their getting into trouble?

8 Who Should Go to Juvenile Hall—

Simulation

Jails hold people who have been arrested for a criminal offense until they go to court. Until 1900, the jailing of children was like the jailing of adults. Children often occupied the same cells as hardened adult criminals.

Around 1900, state legislatures recognized the need to separate children and adults in jail. They passed laws which provided for special treatment of children who had been arrested. Some states divided their jail facilities into adult and juvenile sections. Other states built special facilities for juveniles. In addition, many states set up separate juvenile courts.

Juvenile Halls

Juvenile detention facilities are called juvenile halls. These are not considered jails. Rather, they are supposed to be "as nearly like a home as possible."

The purpose of a juvenile hall is to care for juveniles until the juvenile court decides what should be done with them. These youngsters usually remain in juvenile hall about two weeks. During the time they are detained, youngsters are supposed to receive nourishing meals and adequate sleeping quarters. They should receive medical and dental care, a full school program, and individual counseling. Often they do not receive any of these things.

The laws regarding status offenders (truants, runaways, etc.) are being changed in many states. It is recommended that a resource expert be invited to the class to share relevant information concerning who actually does spend time in juvenile hall.

Teacher Instructions

OBJECTIVE: **To identify and evaluate the criteria and procedures for sending juveniles to juvenile hall.**

NOTE: *This lesson is suitable for peer teaching.*

1. Ask students to read the introductory section of the lesson. Explain that after they have read this section they will have the opportunity to enact a simulation of a Juvenile Hall In-Take Interview.
2. Make sure students understand the alternatives available to the probation officer and the law which applies to juveniles in such cases.
3. The Juvenile Hall In-Take Simulation may be done as an individual, small group or large group activity. If a small group or large group setting is used, invite students to role play the cases described in the student text.
4. After students have made their decisions on each case, discuss the simulation using the questions provided at the end of the student text. Teachers may also wish to invite a juvenile probation officer to visit the class to discuss and debrief the simulation. Encourage students to justify their decisions. Re-emphasize, if necessary, that a final disposition in each case would be made by the juvenile court.

Additional Recommendations

1. **Classroom Resource Persons:** Juvenile probation officer, police officer, and/or an attorney.
2. **Field Experiences:** Youth Correctional Facility.

Who Should Go to Juvenile Hall?

Simulation:

When police arrest a juvenile, they have several alternatives:

Alternative 1:
The police may counsel the youth and release him/her to parents or a guardian.

Alternative 2:
In more serious cases, the police may release the juvenile after telling the parents/guardian that in a few days they will have to go to a probation officer for a "juvenile in-take interview." At this interview, a probation officer talks with the juvenile and his/her parents/guardian about the circumstances that led to the arrest. The probation officer then decides whether to file a petition with the Juvenile Court for a hearing (adjudication).

When a petition is filed, the juvenile and his/her parents/guardian must appear before a Juvenile Court judge. At the first Juvenile Court hearing the judge decides whether to make the juvenile a ward of the court. If the judge does make the young person a ward, another Disposition Hearing is held to decide what should be done about the case.

Alternative 3:
The police may arrest a youngster and take him/her directly to Juvenile Hall when they believe a juvenile is dangerous or needs protection. At Juvenile Hall a probation officer interviews the youngster and decides whether to hold him/her.

In making this decision, the probation officer must follow certain legal guidelines. For example,

. . . The probation officer shall immediately investigate the circumstances of the minor and the facts surrounding his being taken into custody and shall immediately release such minor to the custody of his parent, guardian or responsible relative unless . . . continued detention of the minor is a matter of *immediate and urgent necessity for the protection of the minor or the person or property of another. . . .*

If a probation officer decides to lock up a juvenile, the juvenile must apear before a Juvenile Court judge within 72 hours after first being taken into custody by the police. This appearance in Juvenile Court is called a Detention Hearing. It is for the purpose of deciding if the juvenile should continue to be held in Juvenile Hall while awaiting his/her Adjudication Hearing in Juvenile Court.

Juvenile Hall In-Take: A Simulation

During this activity, members of the class will act as probation officers assigned to Juvenile Hall In-Take. They must decide whether to detain juveniles who have been arrested by the police or release them to their parents, guardians, or other responsible relatives. In each case, the juvenile involved must appear later in Juvenile Court. Thus, you must decide *only* whether the juvenile should remain in Juvenile Hall while waiting to go to Juvenile Court.

In making your decision, keep in mind the following facts:

1. Your decision must conform to the law (see the above).
2. The probation department has been heavily criticized recently by the police and others for releasing too many dangerous suspects. Many people are upset that juveniles arrested by the police can be found on the streets a few hours later bragging to their friends about the crimes they have committed.
3. Juvenile Hall is overcrowded and is generally not a good place for young people to be even for a few hours.

4. Your own views on the right thing to do.
   Read the following cases. In each case, decide whether to hold or release the juvenile before his/her court appearance. Write down each decision and the reasons for it.

Case 1: *John Carver, 14*

John has been arrested because he allegedly sexually molested a 7-year-old neighborhood girl. John has been in trouble before. He has a Juvenile Court record for "glue-sniffing" and being a "runaway." The 7-year-old girl was not physically injured, but she was very frightened.

Case 2: *Barry James, 17*

Barry has been arrested in a police-conducted drug bust in several high schools. Barry has been accused of selling marijuana and pills to other students at his school in an upper middle-class neighborhood. This is the first time Barry has ever been arrested. Barry's parents have already hired an attorney who has contacted you and asked you to release Barry to his parents.

Case 3: *Carl Russo, 17*

Carl has been arrested in the same drug bust sweep described in Case 2. Carl has been accused of selling marijuana and pills to other students at his school in a poor neighborhood. Carl has a long juvenile record: marijuana, possession of a firearm. Carl also is a known gang member. "Snake" is his street name. Carl's parents are not living together. He is presently living with an aunt.

Case 4: *Jane Flowers, 15*

Jane has been arrested for allegedly running away from her foster home. Jane became a ward of the court after her father died of a drug overdose and her mother killed herself. Jane has been in several foster homes, but has been a persistent runaway. The last time Jane ran away, she was arrested for soliciting for prostitution. Jane says that she ran away this time after her foster father beat her. Black and blue marks are evident on her face and back.

Case 5: *Clay Barton, 16*

Clay has been arrested for drunk driving and hit-and-run of an 85-year-old woman while driving under the influence of alcohol. The woman is in critical condition at County Hospital. Clay fled the scene of the accident and was arrested four hours later at his home. Clay has a record of truancy at school but no Juvenile Court record. He is presently living with his mother, who is divorced.

Case 6: *Gerald Medina, 17*

Gerald has been arrested for murder. Gerald is accused of participating in the rape and knife-murder of a 16-year-old girl. He has a Juvenile Court record of assault with a deadly weapon (switchblade), driving while under the influence of narcotics (mescaline), and robbery. Gerald's older brother has spoken to you and has indicated that he will take responsibility for Gerald pending his Juvenile Court trial. The brother is married, has a steady job and appears to be a responsible person.

Discussion Questions

1. Tally the decisions made by the members of the class in Case 1. What were the reasons for allowing the juvenile to go home? For keeping the juvenile in juvenile hall? Discuss the other cases in this lesson as you did Case 1.
2. Based on your experience with these cases and your knowledge of juvenile hall facilities, do you think the law which applies to the detention of juveniles is fair? Why or why not?

9 Is the Death Penalty Constitutional?

(Discussion and case studies)

Death Penalty Upheld for Murder

by Eric Jacobson, Clore Warne Legal Intern

By a 7 to 2 majority, the United States Supreme Court ruled that the death penalty did not violate the Constitution. In a series of five decisions released on July 2, 1976, the Court declared that states could impose the death penalty as a punishment for first-degree murder without violating either the Eighth Amendment's ban on "cruel and unusual punishment," or the Fourteenth Amendment's guarantee of "due process of law."

The Justices said that capital punishment, the death penalty, was not a "cruel and unusual punishment." This was because it was accepted by a majority of Americans as the proper punishment for the most vicious crime against society, first-degree murder. For this reason, the idea of capital punishment did not violate the Constitution.

The Justices ruled, however, that some of the state laws regarding the method by which defendants were chosen to receive the death penalty were unconstitutional. Justice Potter Stuart took the position that, because of the basic ideas of humanity underlying the Eighth Amendment, before a jury could sentence a person to die for committing a crime, it must consider everything about the convicted person and the crime he or she committed. This is necessary, said Justice Stewart, to make sure the defendant deserves the death penalty instead of life imprisonment, and such protection is guaranteed by the Fourteenth Amendment's "due process" clause.

The jurors, then, must consider the *aggravating circumstances* of the situation, or those things about the defendant and the crime which made it a cruel and vicious act. Also, the jurors must consider the *mitigating circumstances* of the crime and the defendant, or those things which call for mercy and leniency on the part of the jurors.

According to this new Supreme Court ruling, states can only allow the jury to sentence a defendant to death if the aggravating circumstances of the crime and the defendant outweigh the *mitigating circumstances*. That is, only if the jury looks at the entire situation and decides that the defendant is such a bad person, and committed such a horrible crime that he or she deserves to die, can the jury recommend the death penalty.

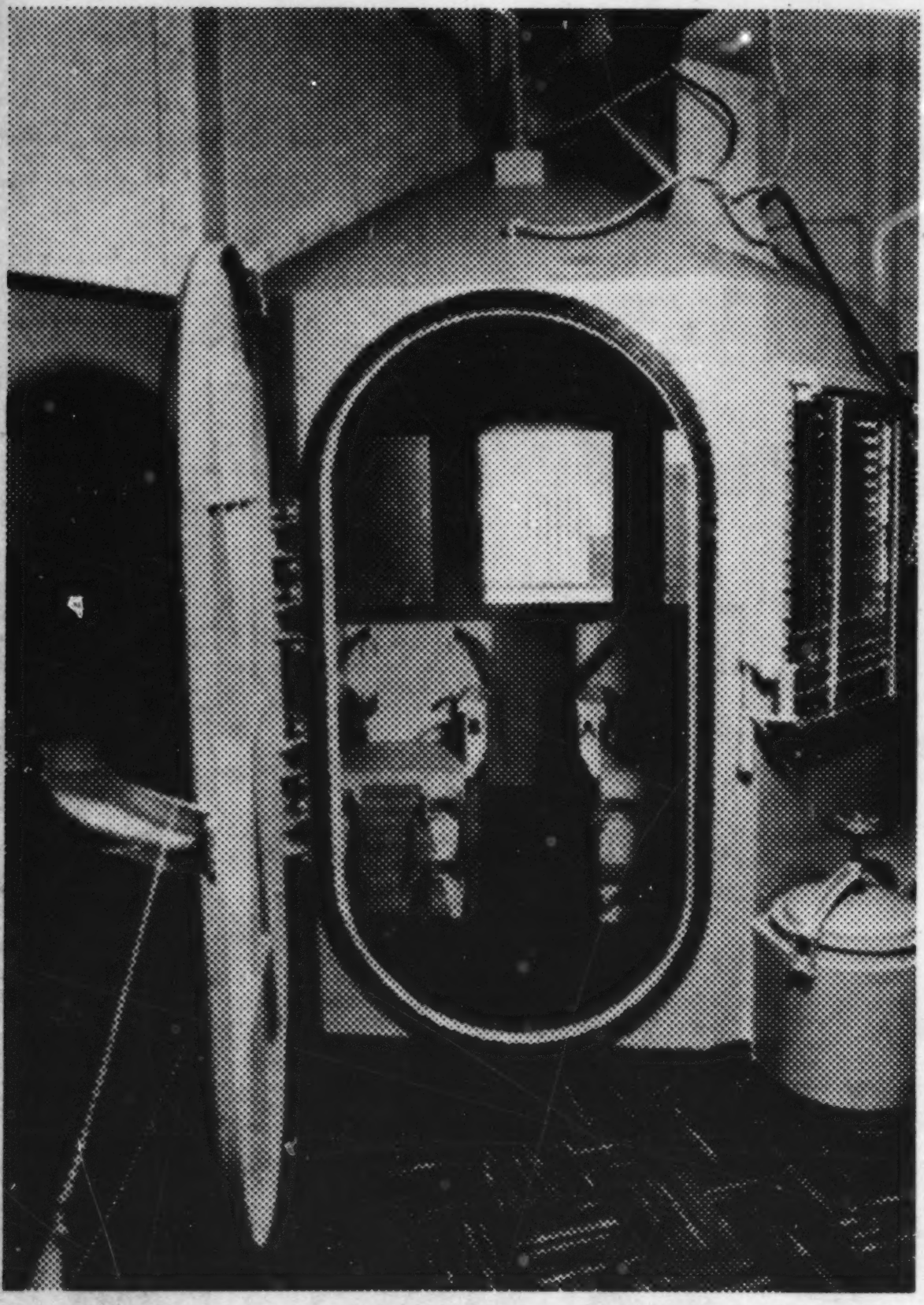
Because of this requirement, the Court struck down both North Carolina and Louisiana laws on capital punishment. These two states had laws which provided that the death penalty was *automatic* whenever a defendant was convicted of first-degree murder. These laws did not allow the juries to consider both the aggravating and the *mitigating circumstances* of the crime.

The death penalty laws of Texas, Georgia and Florida, on the other hand, were declared constitutional because they did provide the juries with enough freedom in their choice between the death penalty and life imprisonment.

Two justices, Thurgood Marshall and William Brennan, Jr., disagreed with the majority. Justice Brennan said the penalty was a "cruel and unusual punishment," just like the rack, screw or wheel. He wrote that it was no longer morally tolerable to our society. Justice Marshall wrote that there was no evidence that the death penalty scared potential criminals enough to prevent them from committing crimes. Since this was one of the major reasons for the existence of the death penalty, and because it does not work, wrote Justice Marshall, the penalty should be outlawed.

Discussion Questions:

1. Do you agree with the majority of the Supreme Court or the dissenters in this death penalty decision? Why?
2. Do you think the death penalty under any circumstances is "cruel and unusual punishment"?



Teacher Instructions

OBJECTIVE: **To identify, describe and evaluate the arguments for and against capital punishment.**

1. Remind students that the death penalty has been a very controversial issue for many decades. In this lesson, they will have an opportunity to review many of the major arguments for and against capital punishment.
2. Ask students to read "The Death Penalty Upheld for Murder."
3. Discuss the arguments for and against capital punishment. Then discuss the article using the discussion questions provided. These questions are complex and call for students to define and discuss their own values. Discussions might take place in large or small group settings. If a small group setting is used, teachers may wish to assign different questions to each group and allow the group to prepare a panel discussion of its question.
4. Ask students to read the cases and respond to the questions orally or as a writing assignment. Allow ample time for discussion because this is an emotionally laden issue.

Additional Recommendations

1. **Classroom Resource Persons:** Invite a lawyer to visit the class to discuss recent death penalty cases. Other resource persons such as a police officer, prosecutor or public defender could also be invited to discuss their opinions on the death penalty issue with the class.
2. **Additional References:** Arthur Koestler's essay titled "On Hanging" and Albert Camus' essay titled "Reflections on the Guillotine" have long been considered the finest on the subject of capital punishment. Both essays discuss the author's opposition to capital punishment.

Is the Death Penalty Constitutional?

Louisiana Ex Rel. Francis v. Resweber (1947)

or The Electric Chair That Failed

by Shirley Hess

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.
Amendment VIII

Crime and Punishment

One night in November, 1944, a Louisiana druggist named Andrew Thomas put his car away. As he stepped from the garage, five shots rang out. One bullet crashed through his right eye, two more entered under his right armpit, and the last two struck the center of his back as he spun around. Andrew Thomas lay dead, the victim of a brutal murder.

A fifteen-year-old Negro confessed the crime to Sheriff Resweber. His name was Willie Francis.

Justice was swift in his case. A week after his indictment a jury found Willie guilty of murder. The next day he was sentenced to death by electrocution on May 3, 1946. *There was no motion for appeal.*

Willie's Ordeal

The night before the execution, Willie Francis ate his last meal, steak and ice cream served on a tin plate, in his jail cell. The next day Willie was prepared for his ordeal. His head was shaved, as well as the shorter hair from his wrists and legs. Then he was strapped into the electric chair by deputies. A piece of gauze dipped in salt water was placed around his head to help speed the electric current. Electrodes were attached to the condemned man's left leg and to his head over the gauze. Wires were connected. A priest administered the last rites of the Catholic Church. Then a black hood was placed over his head, leaving an opening for his mouth so he could breathe.

Failure

Unlike some states, Louisiana executed its citizens in a portable electric chair which was moved to the various jails where the condemned men were held. The chair had been tested twice, and both times it was found to be in perfect working order.

But when the executioner, a prison inmate, threw the switch for Willie Francis, the results were startling! For a fraction of a second nothing happened. Then, according to the witnesses, Willie jumped. He strained against the straps. He groaned. The switch was thrown off and then on again. Willie's lips puffed out and swelled. His body tensed. About two minutes had passed since the switch had first been thrown. But the machine would not kill Willie Francis.

Willie was then removed from the chair and he was able to get to his feet by himself. Asked if he were hurt, he said no, but that the electricity had "tickled" him. However, it was never established if any current actually passed through Willie's body.

The Appeal

Willie sought relief from a second attempt to execute him. He appealed to the state courts to commute his sentence to life in prison. His lawyers argued that to put Willie back in the chair after his agonizing experience would be such cruel and unusual punishment as to violate due process of law.

When their arguments failed, they turned to the Louisiana Governor and the State Board of Pardons. Again they were turned down.

Finally, the case reached the United States Supreme Court. The law books refer to it as *LOUISIANA ex rel. Francis v. Resweber.*

The Arguments for Willie

Only a few times in its history has the Supreme Court attempted to deal with what constitutes "cruel and unusual punishments." But the Court had clearly established the precedent that an electrocution *properly carried out* was not in itself cruel and unusual punishment.

In their arguments, Willie's attorneys emphasized his ordeal in preparing for death: the final hours, the horror of being put into the chair, the straps and hood, the electrodes and wires, the last rites. To subject Willie to this a second time, they contended, would be cruel and unusual.

The Arguments Against Willie

But attorneys for the State of Louisiana claimed that the Supreme Court had no legal right to interfere in this case. Under the law, they argued, only the Governor and the State Board of Pardons could commute a death sentence, and those men had refused.

As they had said to the State Board of Pardons: "How can we expect juries to convict men to pay their debts to society when, afterwards, what they have done is undone by another authority of law having the power to do so?"

What do you think? Should Willie Francis be executed again, or does a second try constitute a cruel and unusual punishment?

Read the following cases and then examine the Supreme Court's ruling on the death penalty.

Case 1: *JUREK v. TEXAS (1976)*

Issue:

Are the procedures for capital-sentencing constitutional, as enacted by the state of Texas?

Background

The new Texas Penal Code limits capital-sentencing to intentional, knowing murders committed in any one of the following five situations:

1. murder of a known peace officer or fireman who was acting in the line of duty
2. murder during the course of committing or attempting to commit a kidnapping, burglary, robbery, forcible rape, or arson
3. murder for hire
4. murder while escaping or attempting to escape from a penal institution
5. murder of an employee of a penal institution

Eighth Amendment: prohibits cruel and unusual punishment
Fourteenth Amendment: ensures equal protection of the law and due process of law

Case

Jerry Lane Jurek, 27, was sentenced to die for kidnapping a 10-year-old girl, making sexual advances to her, then throwing her off a bridge. The girl, daughter of a sheriff's deputy, was still alive when she hit the water and then drowned, according to the autopsy.

Under Texas law, a separate sentencing proceeding is required before the same jury. Prosecution and defense present arguments for or against the sentence of death, followed by two questions, the answers to which determine the imposition of a death sentence.

During the punishment phase, several witnesses for the state testified to the petitioner's bad reputation in the community. Petitioner's father countered with testimony that the petitioner had always been steadily employed since he had left school and that he contributed to his family's support.

The jury then considered the two statutory questions relevant to this case:

1. Whether the evidence established beyond a reasonable doubt that the murder of the deceased was committed deliberately?
2. Whether the evidence established beyond a reasonable doubt that there was a probability that the defendant would represent a continuing threat to society?

The jury unanimously answered yes to both questions, and the judge, therefore, in accordance with Texas law sentenced the petitioner to death.

In your opinion, do death penalty laws in the State of Texas

1. Amount to cruel and unusual punishment?
2. Allow unfair application of the death penalty to people in similar situations?

State your reasons for your opinion.

Case 2: *ROBERTS v. LOUISIANA (1976)*

Issue:

Are the procedures for imposing the death penalty constitutional, as enacted by the state of Louisiana?

Background

The new Louisiana legislation mandates imposition of the death penalty whenever the jury finds the defendant had a specific intent to kill or to inflict great bodily harm in any one of the following five situations:

1. during the perpetration or attempted perpetration of aggravated kidnapping, rape, or armed robbery
2. upon a fireman or peace officer during the line of duty
3. and if the defendant had been convicted of a prior, unrelated murder or was serving a life sentence

4. upon more than one person
5. during murder for hire

Under Louisiana law, if a verdict of guilty of first-degree murder is returned, death is mandated regardless of any mercy recommendation. Every jury is instructed on the crimes of second-degree murder and manslaughter and permitted to consider those verdicts even if no evidence supports them. If a lesser verdict than first-degree murder is returned, it is treated as an acquittal of first-degree murder charges.

Eighth Amendment: prohibits cruel and unusual punishment
Fourteenth Amendment: ensures equal protection of the law and due process of law

Case

A gas station attendant was found dead on August 18, 1973, with four gunshots in his head. Stanislaus Roberts was found guilty of first-degree murder of this man, and sentenced to death. The death penalty was based on a Louisiana statute. This was revised from an earlier statute, which allowed a jury to return any of 4 verdicts:

1. guilty
2. guilty without capital punishment
3. guilty of manslaughter
4. not guilty

This statute was revised to overcome the constitutional problems set out by the Supreme Court in *Furman v. Georgia*, 408 1.S. 238 (1972), which said that standardless jury discretion must be replaced by procedures that safeguard against the arbitrary imposition of death sentences.

The revised law required the death penalty be imposed whenever the jury finds a defendant guilty of first-degree murder, which crime they defined. In a first-degree murder case, the 4 verdicts a jury may return are now:

1. guilty
2. guilty of second-degree murder
3. guilty of manslaughter
4. not guilty

The jury must be instructed on all these verdicts, whether or not they are raised by the evidence or requested by the defendant. If the jury finds the defendant guilty of first-degree murder, any recommendation they may make for mercy is without effect.

The court found that the jury's standardless discretion was not ended by the new statute—the discretion exists in returning a lesser verdict than first-degree murder, even if no evidence supports it and the defendant doesn't raise it. The jurors can use this whenever they feel the death penalty inappropriate, yet they have no standards to apply as to when the death penalty is appropriate. The court also said that not every offense in a like legal category calls for an identical punishment without regard to the past life and habits of a particular offender. Individual blame is not always to be measured by the category of crime committed. The Louisiana statute affords no meaningful opportunity for consideration of mitigating factors presented by the circumstances of the particular crime or by the attributes of the individual offender.

The statute is unconstitutional because it fails to provide standards to guide the jury in its exercise of power to select first-degree murderers who will receive death sentences. In addition, there is no provision for judicial review of the jury's decision. The statute thus violates the 8th and 14th amendments of the U.S. Constitution.

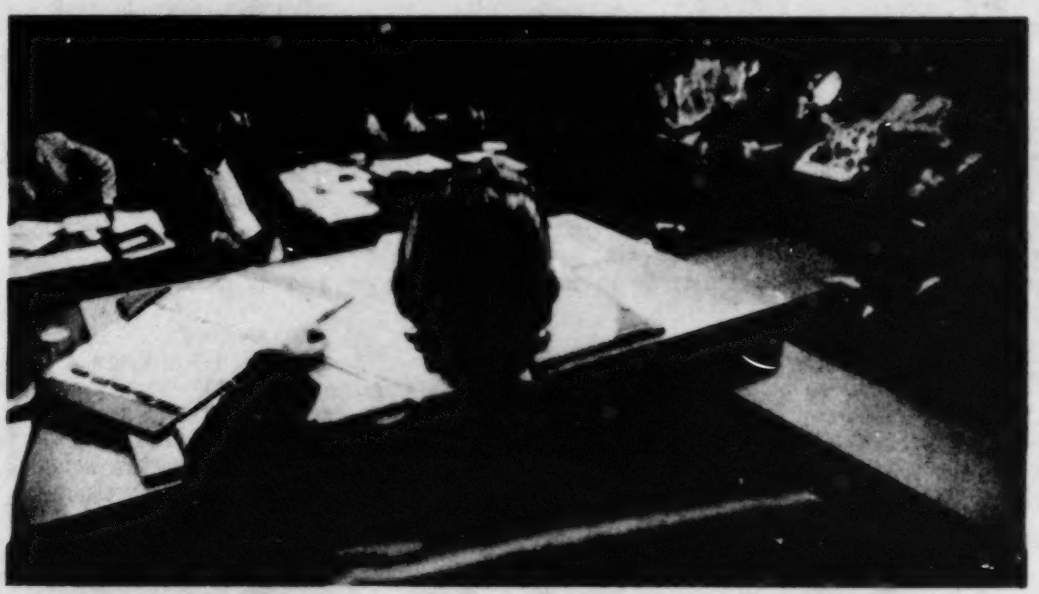
Dissenters: Burger, White, Blackmun, Rehnquist.

Decision:

In your opinion, do death penalty laws in the State of Louisiana:

1. amount to cruel and unusual punishment?
2. allow unfair application of the death penalty to people in similar situations?

State your reasons for your opinion.



10 When Should Probation Be Revoked?

When a person is convicted and placed on probation, the judge usually sets certain "conditions of probation." The conditions of probation require the probationer to act or limit his/her behavior according to certain rules. Below you will find a list of possible conditions of probation which may be used by the judge.

Conditions of Probation

1. Spend a suitable time in County Jail.
2. Pay a fine, plus penalty assessment, to the Probation Officer in such manner as he shall describe.
3. Minimum payment of fine or restitution to be $_____.
4. Make restitution through the Probation Officer in such amount and manner as such officer shall prescribe.
5. Not drink any alcoholic beverages and stay out of places where they are the chief item of sale.
6. Not use or possess any narcotics, dangerous or restricted drugs or associated paraphernalia, except with valid prescription, and stay away from places where drug users congregate.
7. Not associate with persons known by the defendant to be narcotics or drug users or sellers.
8. Submit to periodic anti-narcotic testing as directed by the Probation Officer.
9. Have no blank checks in possession, not write any portion of any checks, not have bank account upon which may draw checks.
10. Not gamble or engage in bookmaking activities or have paraphernalia thereof in possession, and not be present in places where gambling or bookmaking is conducted.
11. Not associate with (name) _____.
12. Cooperate with the Probation Officer in a plan for _____.
13. Support dependents as directed by Probation Officer.
14. Seek and maintain training, schooling, or employment as approved by Probation Officer.
15. Maintain residence as approved by Probation Officer. (If applicable add: Defendant may reside in _____ under the terms of _____.
16. Surrender driver's license to clerk of court to be returned to Department of Motor Vehicles.
17. Not drive a motor vehicle unless lawfully licensed and insured.
18. Not own, use or possess any dangerous or deadly weapons.
19. Submit his/her person and property to search and seizure at any time of day or night by any law enforcement officer with or without a warrant.
    NOTE: This condition is recommended only with the approval of the Director of Probation.
20. Obey all laws, orders, rules and regulations of the Probation Department and of the Court.

If a Probation Officer learns that one of his/her probationers has violated the terms of probation, the P.O. has two choices. The Officer may simply call in the probationer and give a warning or, if the violation is serious enough, the officer may order the probationer back to court for a Probation Revocation Hearing.

At a Probation Revocation Hearing, the Judge must decide whether to continue or revoke (cancel) probation. If probation is revoked, the probationer usually must pay a fine and/or go to jail or state prison. Occasionally, a Judge will continue probation, but with additional conditions.

Teacher Instructions

OBJECTIVE: **To develop an understanding of the conditions of probation, its many variables and the process of revocation.**

1. Ask the students to read the introductory material, *Conditions of Probation.*
   In this activity, members of the class will role-play a Probation Revocation Hearing. After the role-play the class will have the opportunity to decide whether probation should or should not be cancelled in the case presented.
2. Divide the class into groups of four. Group members should choose one of the following roles: judge, probationer, probation officer, public defender.
3. Ask the students to study the role description for each role and read the Probation and Probation Violation Reports, Statement of Probationer, and Recommendations of the Probation Officer.
4. When they are ready, conduct the Probation Revocation Hearing with members of the group, using the procedures described. When they are finished with the simulation, discuss the activity with members of the class.

When Should Probation Be Revoked?

Probation Revocation Hearing

Procedure for Probation Revocation Hearing:

a. The Judge opens the hearing and asks if all parties are present and ready.
b. The Judge asks the Public Defender to present his/her case.
c. The Public Defender may cross examine the Probation Officer.
d. The Public Defender may call Probationer Miller to testify. If this happens, the Judge may also ask questions.
e. The Judge may ask the Probation Officer questions at any time.
f. The Public Defender should close by summarizing his/her arguments against revoking Lee Miller's probation.
g. The Judge should ask the Probation Officer to summarize his/her arguments in favor of revoking Lee Miller's probation.
h. The Judge decides whether or not to revoke Lee Miller's probation (see alternatives listed in Judge's role description).
i. Each "Judge" should announce his/her decision before the entire class. The "Judges" should also explain the reason(s) for their rulings.

Role Descriptions

Probationer: Lee Miller

You feel that circumstances forced you to violate the conditions of your probation. Consequently, you feel your probation should not be revoked. You have a Public Defender to represent you. Discuss with him/her the strategy you should follow at your Probation Revocation Hearing. Decide with your Public Defender whether or not you should take the witness stand and testify on your behalf and subject yourself to cross examination. You have the right to remain silent if you wish.

Public Defender:

You will represent Probationer Miller at the Probation Revocation Hearing. Discuss with your client the strategy he should follow in attempting to convince the Judge not to revoke probation. Decide whether or not to call the Probation Officer to the witness stand in order to cross examine him/her with regard to his/her recommendation to revoke your client's probation. Also, decide whether or not your client should take the witness stand to testify. Your client has the right to remain silent; however, if your client does testify, the Judge may also ask questions.

Probation Officer:

You are Lee Miller's Probation Officer. You have written the probation report which will be the focus of this Probation Revocation Hearing. If you are called to testify, you should defend your recommendation that Miller's probation be revoked and that the 1-year suspended jail sentence be imposed.

Judge

You were the trial Judge in Lee Miller's manslaughter trial. After his being convicted, you sentenced Lee Miller to a 1-year county jail term. Then you suspended this sentence and placed Miller on probation. Today you must decide what to do in view of Miller's probation violations. Your alternatives are as follows:

1. continue probation under the existing conditions;
2. continue probation with additional conditions that you will identify;
3. revoke probation, and impose the 1-year sentence.

Documents: Probation Report

Name of Probationer: Lee Miller

Age: 38

Marital Status: Divorced

Occupation: Assembly line worker

Employer: United Radio Company

Current Conviction:

1. Probationer Lee Miller was convicted two months ago of manslaughter. Probationer Miller, while driving an automobile under the influence of alcohol, struck and killed a 5-year-old girl.
2. **Sentence:**
   a. 1 year in county jail (suspended)
   b. $1,000 fine
   c. placed on two-year formal probation
   d. conditions of probation: 2, 5, 13, 14, 15, 16, 20; special conditions: Probationer is not to drive any motor vehicle during the period of probation.

Probation Violation Report:

1. Two weeks ago at 7:55 a.m., Probationer Miller was stopped for speeding by a Highway Patrol officer. The officer administered several field tests for drunk driving, and concluded that Probationer Miller may have been driving under the influence of alcohol. Probationer Miller was arrested and taken to a local Highway Patrol Station where a chemical test for alcohol consumption was administered. The result of this test showed that while Probationer Miller had been drinking alcohol recently, the level of this substance was below that required to indicate "driving under the influence." Probationer Miller was cited for speeding and driving without a license, and then released.
2. **Probation Violations:**
   No. 5—Probationer Miller drank an alcoholic beverage.
   No. 20—Probationer Miller drove an automobile without a license, and violated the speed law.

Special Condition—Probationer Miller drove a motor vehicle during the period of probation.

Statement of Probationer

I admit that I drove an automobile and was speeding in violation of my probation. However, I reported these violations myself to my probation officer within 24 hours of the incident.

It is also true that I had been drinking, but only in my own apartment. A friend had come over to spend the evening, and brought some beer with him.

I overslept the next morning, and had to get to work in a half hour. I have been taking the bus to work, but this takes an hour. I decided to ask a neighbor if I could borrow his car so that I could get to work on time. He said it was O.K. to take his car.

I had already been late to work two times since getting my job a month ago. I was afraid that if I lost my job I would not be able to make support payments to my ex-wife and children and pay off my fine to the court. Both are conditions of my probation.

As it turned out, I was half a day late for work, but my boss listened to my story and decided to give me one more chance. I believe that I have learned a lesson from this, and promise to strictly follow my conditions of probation in the future.

Recommendations of Probation Officer:

Probationer Miller seems to mean well, but also appears weak-willed. I recommend that the probation be revoked, and the suspended 1-year county jail sentence be imposed.

Discussion Questions:

1. What did the Judges decide in this case? Why?
2. Were some Judges more lenient than others? If so, how do you account for these differences in attitude?
3. Assume that there was a great deal of publicity surrounding Lee Miller's original manslaughter trial and that many people in the community were angry because Miller was placed on probation rather than being sent to jail. Do you think the Judges' decisions would have been affected by community feelings of this sort? Why or why not?
4. How is the Probation Revocation Hearing different from a trial? How is it similar? What constitutional rights does the probationer have at this hearing? Why do you think this is the case?
5. In your opinion, is the Probation Revocation Hearing a fair way to decide whether a probatiner should lose his/her probation status? Why or why not?